

1  
2 ORIGINAL

3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEW JERSEY  
5 CIVIL ACTION NO. 84-678 SA

6 SUSAN HAINES, as Administratrix :  
7 ad Prosequendum and :  
8 Administratrix of the Estate :  
9 of PETER F. ROSSI, :

10 Plaintiff, :

11 vs. :

12 LIGGETT GROUP, INC., et al, :

13 Defendants. :  
14 ----- :

15 DEPOSITION OF:  
16 RICHARD W. POLLAY

17 Tuesday, September 17, 1991  
18 Short Hills, New Jersey

19 A P P E A R A N C E S:

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29 **TERESA K. LUCAS**

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIR</u>	<u>RECR</u>
RICHARD W. POLLAY				
By Mr. Allinder	6			

E X H I B I T S

<u>FOR IDENT.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	Copy of Check No. 100785	7
2	Letter from Mr. Tucker to Ms. Walters dated 8/30/91 and attachments	12
3	Letter from Ms. Walters to Mr. Naar, et al, dated 3/15/91	13
4	Document entitled "Themes and Tactics in Cigarette Advertising, 1938-1983: Technical Report on Methods and Measures" dated 7/9/87	14
5	Document entitled "Chronological Notes on the History of Cigarette Advertising" dated 8/87	14
6	Document entitled "Propaganda, Puffing and the Public Interest: Cigarette Publicity Tactics, Strategies and Effects" dated 5/90	14
7	Curriculum vitae of R.W. Pollay	14
8	Black binder of documents entitled "Haines v. Liggett"	29

EXHIBITS (Cont'd)

1			
2			
3	9	List of numbers	36
4	10	List of numbers	37
5	11	Document entitled "Chronology of Peter Rossi"	50
6	12	Document entitled "Haines v. Liggett Deposition Testimony Regarding Smoking Habits of Peter Rossi"	51
7			
8	13	Document entitled "Research on Cigarette Promotion (as of August 1991)"	53
9			
10	14	Document entitled "Research on Cigarette Promotion (as of August 1991)"	53
11			
12	15	Document entitled "Peter Rossi Timeline Re: Brands Smoked" and attachment	56
13			
14	16	Document entitled "Recent Research Related Activity (as of Sept. 1991)"	57
15			
16	17	Curriculum vitae of R.W. Pollay	59
17	18	Handwritten document	61
18	19	Letter from Mr. Kearney to Ms. Walters dated 4/11/90 and attachment	68
19			
20	20	Document entitled "Cigarettes Under Fire: Blowing Away the PR Smoke Screen"	68
21			
22	21	Document entitled "The more things change...new images appear over the decades, but the goals of cigarette advertising remain the same"	68
23			
24			
25			

1  
2 (Before Gary M. Talpins, a Certified  
3 Shorthand Reporter and Notary Public of the State  
4 of New Jersey, held at the offices of Messrs. Budd,  
5 Lerner, Gross, Rosenbaum, Greenberg & Sade, 150  
6 John F. Kennedy Parkway, Short Hills, New Jersey,  
7 on Tuesday, September 17, 1991, commencing at 10:00  
8 a.m.)

9 - - - - -  
10  
11 R I C H A R D W. P O L L A Y, Faculty of  
12 Commerce, U.B.C., Vancouver, Canada, Sworn.

13  
14 DIRECT EXAMINATION BY MR. ALLINDER:

15 Q. Dr. Pollay, would you state your full  
16 name for the record, please?

17 A. Richard Warren Pollay, P-o-l-l-a-y.

18 Q. What is your professional address, sir?

19 A. Faculty of Commerce, University of  
20 British Columbia, Vancouver, Canada.

21 Q. Dr. Pollay, I'm going to hand you a  
22 check for \$2,000 as payment for your testimony  
23 today.

24 MR. ALLINDER: Would you mark this,  
25 please.

1 Pollay - direct

2 (Whereupon the document was received  
3 and marked Exhibit 1 for identification.)

4 A. Thank you for your check. It's much  
5 preferable to waiting nine months.

6 Q. I'm going to hand you what has been  
7 marked Pollay Exhibit 1. Is this a copy of the  
8 check that I just handed you before?

9 A. Yes, it is.

10 Q. I understand that you are familiar with  
11 the deposition process. Is that correct?

12 A. Yes, you have deposed me on two  
13 previous occasions.

14 Q. Have I deposed you, sir?

15 A. I do not recall. There are typically  
16 10 or 11 people at a deposition.

17 Q. You understand if I ask you a question  
18 that you don't understand, that you will not answer  
19 it, you will just tell me I don't understand?

20 A. That is correct, I do understand that.

21 Q. And so if you answer a question, I will  
22 assume that you did understand it. Do you agree  
23 with that?

24 A. Yes.

25 Q. Also if I ask you a question that you

1 Pollay - direct

2 don't know the answer to, I expect that you will  
3 tell me I don't know the answer, you will not  
4 speculate or guess. Will you do that?

5 A. That's correct.

6 Q. I will also assume that the answers  
7 that you provide will be based on your personal  
8 knowledge or on your opinion to a reasonable degree  
9 of scientific probability or certainty. If you are  
10 not going to testify to that standard, will you  
11 please specify so in your answer?

12 A. Okay.

13 Q. I am also going to ask you some  
14 questions that hopefully can be answered with  
15 either a yes or no answer. Some of my questions I  
16 think will require a longer answer. Those that can  
17 be answered yes or no, will you try to answer them  
18 in that fashion, please?

19 A. Yes, I will, with, of course,  
20 qualifications when I want to explain my response.

21 MR. DUKE: Pardon me, doctor, would you  
22 please keep your voice up.

23 THE WITNESS: I had the same difficulty  
24 when you were giving your names. I think the  
25 background air circulation system is a problem.

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1 Pollay - direct

2 MS. WALTERS: We could turn it off but  
3 I suspect it would get pretty hot in here.

4 MR. DUKE: I think it would be more  
5 comfortable if the doctor just raised his voice.

6 Q. Dr. Pollay, I will try not to interrupt  
7 your answers and I will ask you to try to not  
8 interrupt my questions and when you are done  
9 answering a question, I will assume that you have  
10 answered it completely. Do you understand that?

11 A. Yes.

12 Q. Have you been apprised by Mrs. Walters  
13 of the ruling by Magistrate Hedges on September 5th  
14 concerning the scope of expert discovery in this  
15 case?

16 A. No, I have not, to my knowledge.

17 Q. This deposition will, or at least my  
18 examination in this deposition will not  
19 intentionally cover areas that are currently  
20 preempted under the law that's in effect in the  
21 Third Circuit and it is possible that your further  
22 deposition will be necessary in this case depending  
23 upon whether the law changes before the case is  
24 tried. Do you understand that?

25 A. Yes.

1 Pollay - direct

2 Q. We have on the table in front of you  
3 essentially two groups of materials. There are  
4 several stacks immediately to your front and then  
5 there is a second stack of materials somewhat  
6 removed from the remainder. Do you see these?

7 A. I don't understand what you mean by two  
8 groups. There seem to be several kinds of  
9 materials.

10 MR. ALLINDER: Mrs. Walters, this stack  
11 of material that is out in the middle of the table  
12 that I'm indicating, those are the materials that  
13 were not produced to us on September 12th. Is that  
14 correct?

15 MS. WALTERS: Those were documents that  
16 Dr. Pollay reviewed in connection with the  
17 Cipollone case. All of the Cipollone documents are  
18 documents that he has reviewed and may rely upon at  
19 the time of trial. They weren't in Canada;  
20 therefore, they weren't part of the Canadian  
21 production so we are producing them here today for  
22 completeness but you, I would say, have already  
23 seen those. They are part of the Cipollone  
24 documents and then there are two additional  
25 documents that were given to you today, one is a

1 Pollay - direct  
2 produced document from one of the defendants,  
3 84440122, it's a Lorillard document, 1961, Lennen &  
4 Newell advertising presentation, which we did not  
5 produce to you as part of the production so we are  
6 doing that now.

7 MR. ALLINDER: Can you read the last  
8 page of that document, the identification on the  
9 last page, please?

10 MS. WALTERS: 84440218. And then there  
11 is an article written by Dr. Pollay that I don't  
12 think we had until yesterday. So we are giving  
13 that to you now. I don't know if you have seen it  
14 or not.

15 MR. ALLINDER: What is the title of  
16 that article?

17 MS. WALTERS: "Signs and symbols in  
18 American cigarette advertising, a historical  
19 analysis of the use of pictures in health."

20 THE WITNESS: The citation is on the  
21 last page.

22

23 BY MR. ALLINDER:

24 Q. Dr. Pollay, that is a published version  
25 of that article?

1 Pollay - direct

2 A. That's correct, and the citation to  
3 that was listed on my resume and other  
4 bibliographic references to my work on cigarette  
5 advertising.

6 MS. WALTERS: It was published in  
7 1991?

8 THE WITNESS: It's the hard copy that  
9 finally appeared.

10 Q. It was published in only one location,  
11 I take it?

12 A. That's correct.

13 Q. It indicates here that this is the  
14 "Marketing & Semiotics" paper in the Copenhagen  
15 Symposium?

16 THE WITNESS: That is correct.

17 MR. ALLINDER: Would you mark that  
18 Exhibit 2, please.

19 (Whereupon the document was received  
20 and marked Exhibit 2 for identification.)

21 Q. Dr. Pollay, I'm handing you what has  
22 been marked as Exhibit 2. This is the subpoena for  
23 your deposition which Mrs. Walters accepted on your  
24 behalf. Have you seen this document before?

25 A. No, I have not. This material was

1 Pollay - direct

2 discussed on the telephone because I had to produce  
3 documents in Vancouver consistent with this  
4 deposition.

5 Q. You discussed this on the telephone  
6 with Mrs. Walters?

7 A. Yes, that's correct.

8 Q. And when did you do that?

9 A. I don't recall.

10 Q. Was it prior to September 12th, which  
11 was last Thursday?

12 A. It must have been because that's the  
13 date on which I produced the documents for you.

14 Q. Was it prior to September 5th, which  
15 was the date that representatives from Reynolds  
16 came to your office in Vancouver to review the  
17 Cipollone production?

18 A. Yes, that's the date I had in mind.

19 MR. ALLINDER: Would you mark this  
20 Exhibit 3, please.

21 (Whereupon the document was received  
22 and marked Exhibit 3 for identification.)

23 Q. Dr. Pollay, I'm handing you what has  
24 been marked Exhibit 3. Do you agree that this is a  
25 letter from Mrs. Walters dated March 15, 1991,

1 Pollay - direct

2 indicating that you would be called to testify in  
3 this case and setting forth a summary of your  
4 opinions?

5 A. Yes.

6 Q. This letter also indicates on pages two  
7 and three that three listed reports and your  
8 curriculum vitae are enclosed. Do you see that?

9 A. No, I do not. Could you direct me to  
10 where you refer to?

11 Q. On the first page at the bottom, it  
12 says, I believe, that "Dr. Pollay will testify in  
13 this matter on the subjects set forth herein as  
14 well as on the subjects contained in the enclosed  
15 reports" and the top of page two, there are three  
16 reports listed.

17 A. Yes. You referenced a curriculum  
18 vitae. I couldn't find that.

19 Q. On the last page, last paragraph.

20 A. Yes.

21 Q. Do you see that now?

22 A. Yes, I do.

23 MR. ALLINDER: Would you mark these  
24 four, five, six and seven, please.

25 (Whereupon the documents were received

1 Pollay - direct  
2 and marked Exhibits 4, 5, 6 and 7 for  
3 identification.)

4 Q. Dr. Pollay, I'm handing you what has  
5 been marked as Exhibits 4, 5, 6 and 7. Can you  
6 identify these as the three reports and curriculum  
7 vitae that were enclosed with Mrs. Walters' March  
8 15th letter?

9 A. Yes.

10 Q. Exhibit 4 is a copy of your themes and  
11 tactics article. Is that correct?

12 A. That's correct.

13 Q. And five is the chronological notes?

14 A. That's correct.

15 Q. Six is the propaganda and puffing?

16 A. Yes, a typed script version involved in  
17 a reprint of what was actually published.

18 Q. And the article that was actually  
19 published, was it entitled the same or differently?

20 A. Yes; no, it was the entitled the same.

21 Q. Exhibit 7 was the copy of your C.V.  
22 that was enclosed?

23 A. That's correct, C.V. dated as of  
24 September 1990.

25 Q. I understand that in the materials that

1 Pollay - direct

2 we received last Thursday, there is a new  
3 curriculum vitae?

4 A. That's correct. I update my vitae  
5 annually.

6 Q. Dr. Pollay, will you look again at  
7 Exhibit 2, please, which is the subpoena and  
8 production request. And if you will look at the  
9 third page from the last, you will see what is  
10 entitled the production request. Do you see that?

11 A. Yes, I do.

12 Q. It's my understanding that in response  
13 to this request, you have on two occasions made  
14 materials available to defense counsel. Is that  
15 correct?

16 A. That's correct.

17 Q. The first occasion was on September 5th  
18 in Vancouver, British Columbia. Is that correct?

19 A. The two occasions I was referring to in  
20 Vancouver were a production last December and then  
21 a production in September in Vancouver.

22 Q. Do you know what case we are deposing  
23 you in regard to today?

24 A. Yes, this is now the Haines case.

25 Q. And last December, you were deposed in



1 Pollay - direct

2 the Cipollone case. Is that correct?

3 A. That's correct.

4 Q. You have made two productions of  
5 materials in the Haines case. Is that correct?

6 A. That's right, materials were produced  
7 in two locations, some materials produced in  
8 Vancouver and some materials produced here.

9 Q. The first occasion was on September 5th  
10 in Vancouver. Do you recall that date?

11 A. That's correct.

12 Q. This first production, as I understand  
13 it, includes the materials that you had collected  
14 prior to December 1, 1990, and produced to  
15 defendants in Cipollone?

16 A. That's correct. It was an identical  
17 production to what was produced in Cipollone.

18 Q. And this production also, as I  
19 understand it, did not include the materials that  
20 you produced to defendants prior to your first  
21 deposition in Cipollone. Is that correct?

22 A. It did not include the corporate  
23 documents. It included all my own work, my own  
24 publishing and my materials in my possession.

25 Q. Did it include, for example, the

1 Pollay - direct  
2 background information and materials on the themes  
3 and tactics content analysis?

4 A. It included the full report on the  
5 themes and tactics including all the technical  
6 appendices.

7 Q. And the second occasion on which you  
8 produced materials to defendants in response to  
9 this request was on September 12th here in Mrs.  
10 Walters' office. Is that correct?

11 A. I didn't produce that material, Miss  
12 Walters produced that material for you.

13 Q. Did any of that material originate with  
14 you? Did it come from you?

15 A. Some of the material, anything that I  
16 had authored and published I forwarded to her so  
17 that it could be produced here, anything  
18 supplemental to what had been produced in  
19 Vancouver.

20 Q. Your September 12th production, as I  
21 understand it, consists of materials that were  
22 either generated after December 1, 1990, or were  
23 received by you after December 1, 1990, and which  
24 you reviewed and relied on for your opinions in  
25 this case. Is that correct?

1 Pollay - direct

2 A. I believe so but perhaps I should have  
3 a repeat of the question.

4 MR. ALLINDER: Read it back, please.

5 (Whereupon the record was read.)

6 A. Not precisely. It probably includes  
7 materials that were generated by me before then,  
8 which were in the hands of publishers, which would  
9 have been published in the intervening period. I  
10 provided a full update of my work on cigarette  
11 advertising, my research and reports.

12 Q. So it included, this production, then,  
13 included materials that came into your possession  
14 after December 1, 1990. Is that correct?

15 A. That's correct.

16 Q. Dr. Pollay, what I want to do now is  
17 start going through some of these materials that  
18 are in front of you that were produced to  
19 defendants on September 12th. And let's see  
20 whether we can take this in any order or some order  
21 that makes sense and that will be easier. What I'm  
22 going to do is we will take them one at a time and  
23 then we will try to move them back a little bit so  
24 we can keep them straight on what we have looked at  
25 and what we haven't.

1 Pollay - direct

2 Can you start with that white notebook  
3 in front of you. What is that that you now have in  
4 front of you, Dr. Pollay?

5 A. This white notebook is a research  
6 product of mine entitled "Cigarettes through the  
7 advertising ages." It includes two reports, each  
8 providing information as was published originally  
9 in the trade magazine Advertising Age, the first  
10 report, co-authored with an Anne Lavack, covering  
11 the years 1950 through 1959; and the second report,  
12 co-authored with David Carter-Whitney, covering the  
13 years 1960 through 1964.

14 Q. Were they prepared at the same time?

15 A. Yes, they were.

16 Q. And there is an August 1991 date on the  
17 notebook. Is that correct?

18 A. That's correct, they were completed at  
19 the end of August 1991.

20 Q. And did you indicate that this is a  
21 working paper?

22 A. That's correct.

23 Q. I also believe that it's indicated in  
24 that notebook that this is a research finding aide,  
25 is that what you consider it to be?

1 Pollay - direct

2 A. That's correct.

3 Q. What is the information that is  
4 contained in this notebook and how was it compiled?

5 A. It's all of the information that was  
6 published in the trade magazine Advertising Age  
7 during this 15 year interval, 1950 to 1964, on  
8 cigarettes and cigarette advertising.

9 Q. Was Advertising Age published prior to  
10 1950?

11 A. Yes, it was.

12 Q. And was it published after 1964?

13 A. Yes, it was.

14 Q. How often is Advertising Age  
15 published? What is the frequency of publication?

16 A. It has been variable but through most  
17 of this period, it was once a week.

18 Q. Have you reviewed Advertising Age  
19 issues for information pertaining to cigarettes for  
20 the period after 1964?

21 A. We are currently in the process of  
22 doing that.

23 Q. You have no final product in your  
24 possession at the present time?

25 A. That is correct.

1 Pollay - direct

2 Q. What was the reason you prepared this  
3 notebook?

4 A. As part of my ongoing research efforts  
5 on cigarettes and cigarette advertising, my  
6 historical work generally.

7 Q. Do you rely on this notebook for your  
8 opinions in this case?

9 A. It includes much information that's  
10 probably not of relevance to this case but it does  
11 include information about the marketing of Kents  
12 and Lorillards, which is part of my knowledge that  
13 I will rely on.

14 Q. Is the copy of the notebook that you  
15 have in front of you your personal copy?

16 A. No, it was a copy provided to this  
17 office for production purposes, one you can use.

18 Q. Does the copy that you have in your  
19 possession contain highlighting or annotations or  
20 notations or is it in any way different from the  
21 copy that you have in front of you?

22 A. The one that I have in my possession  
23 containing highlights?

24 Q. That's correct.

25 A. No, it would not.

1 Pollay - direct

2 MS. WALTERS: You mean as it relates to  
3 this case? He may have copies that he used for  
4 other purposes. I just want to clarify the  
5 question. You aren't asking whether he has any  
6 copies in his possession that may have highlighting  
7 on it that may relate to some other purpose than  
8 this case, do you?

9 MR. ALLINDER: My question as posed has  
10 no restrictions on it.

11 MS. WALTERS: I object to the form.

12 A. This seems to be a clean copy, as is my  
13 copy.

14 Q. So they are identical?

15 A. Yes.

16 Q. Dr. Pollay, will you move that notebook  
17 out of the way and perhaps hand it to me so I can  
18 get it away from these other materials and can you  
19 pick up the blue notebook.

20 (The witness complies.)

21 Q. What is that?

22 A. This is another finding aide, it's  
23 entitled "A scientific smokescreen," subtitled "a  
24 documentary history of some public relations  
25 efforts for and by the Tobacco Research Council,

1 Pollay - direct

2 1954 to 1958."

3 Q. Was this notebook produced to the  
4 defendants prior to your deposition in Cipollone?

5 A. I don't believe so. I don't recall  
6 that it was. I don't recall.

7 Q. What, again, is the date that the  
8 notebook was prepared?

9 A. June 1990.

10 Q. Have you made any changes in this  
11 notebook since --

12 A. No, I have not.

13 Q. -- December 1, 1991?

14 A. No, I have not.

15 Q. If you will look through that notebook,  
16 Dr. Pollay, I think you will find there are  
17 portions of the notebook that are highlighted.

18 A. Actually, this was produced in December  
19 for Cipollone, yes, it was, as was the summary  
20 paper that I authored that summarizes the contents  
21 of this that has since been published in Public  
22 Relations Review.

23 Q. Dr. Pollay, again, can you check or  
24 look through the notebook, please. You see that  
25 there are portions of the text that is highlighted?



1 Pollay - direct

2 A. Yes.

3 Q. Do you know who highlighted those  
4 portions of the text?

5 A. No, I do not. I don't find -- there is  
6 a little bit of highlighting.

7 Q. Is this your copy of this notebook?

8 A. No, this is not my copy.

9 Q. You do have a copy of this notebook?

10 A. Yes, I have multiple copies of this  
11 notebook.

12 Q. Do you have a copy of this notebook  
13 that contains highlighting or marginalia or any  
14 notations that make it different from the copy that  
15 you have in front of you?

16 A. No, I do not, except that I don't have  
17 these highlights.

18 Q. Your copies, then, are clean, as I  
19 understand it; they have no notations?

20 A. They are clean except like these, they  
21 may reproduce pencil marks or other marks that were  
22 on the original documents as found in the  
23 archives. They are clean of my work.

24 Q. Do you rely on this notebook, Dr.  
25 Pollay, for your opinions in this case?

1 Pollay - direct

2 A. Yes, I do.

3 Q. Will you hand that notebook to me,  
4 please, and again, I will set it aside.

5 Dr. Pollay, I'm handing you a third  
6 notebook. Can you identify this, please?

7 A. It's entitled "Haines versus Liggett,  
8 ads and articles sent to experts."

9 Q. And that notebook contains sections  
10 that are tabbed, does it not?

11 A. That's correct.

12 Q. The first several of the tabs have  
13 cigarette brands indicated. Is that correct?

14 A. That's correct.

15 Q. And then there are advertisements  
16 appearing behind the tabs?

17 A. That's correct.

18 Q. And then I believe there are dividers  
19 down towards the end that indicate that there are  
20 articles behind those dividers. Is that correct?

21 A. Yes, about three quarters or 80 percent  
22 through the material, it shifts from advertising to  
23 articles from Time and Life.

24 Q. If you would turn to the section that  
25 says, "True," there is a page immediately behind

1 Pollay - direct

2 the divider that has some typing on it. What does  
3 that read?

4 A. "True cigarette ads which appeared in  
5 Time Magazine read by Peter Rossi." These are also  
6 representative of the advertising placed in Life  
7 Magazine, also read by Peter Rossi.

8 Q. Did you prepare that?

9 A. No, I did not.

10 Q. Did you prepare this notebook?

11 A. No, I did not.

12 Q. Have you reviewed these materials?

13 A. Yes, I have.

14 Q. When did you review them?

15 A. Sometime this spring. I don't recall  
16 the exact dates.

17 Q. That's as specific as you can be?

18 A. Yes.

19 Q. Who did you receive these materials  
20 from?

21 A. From Miss Walters' office.

22 Q. Did you ask for them or did she send  
23 them to you unsolicited?

24 A. It was part of the materials sent  
25 relevant to the Haines case.

1 Pollay - direct

2 Q. Did you ask that these materials be  
3 sent to you or were they just included in materials  
4 that Mrs. Walters selected and sent to you?

5 A. They were included in what Miss Walters  
6 sent to me.

7 Q. I don't think you are answering my  
8 question. Did you ask specifically that these  
9 advertisements and articles be sent to you or were  
10 they merely included in materials which she  
11 selected and sent to you for your review?

12 MS. WALTERS: He did answer. You gave  
13 him two alternatives. Therefore, the question is  
14 objectionable. But as to the two alternatives, his  
15 response was to select the latter alternative.

16 Q. Perhaps I misunderstood your answer.  
17 Your answer, then, was you did not ask specifically  
18 for these materials, they were just included in  
19 things that Mrs. Walters sent to you?

20 MS. WALTERS: His answer was what it  
21 was. The record will speak for itself.

22 Q. I'm going to ask the question again,  
23 Dr. Pollay. Did you ask Mrs. Walters to send this  
24 notebook to you?

25 A. No, I did not.

1 Pollay - direct

2 MS. WALTERS: That's a new question.

3 THE WITNESS: Yes.

4 Q. Do you rely on these materials for your  
5 opinion in this case?

6 A. Yes, I do.

7 Q. Do you have a copy of this notebook?

8 A. Yes, I do.

9 Q. And does your copy of this notebook  
10 differ in any way from the one that you have in  
11 front of you?

12 A. No, it does not. I trust it does not.

13 Q. So as far as you know, there is no  
14 highlighting or annotations or anything on your  
15 version of this notebook?

16 A. That's correct.

17 MR. ALLINDER: Mark this, please, as  
18 the next exhibit.

19 (Whereupon the notebook was received  
20 and marked Exhibit 8 for identification.)

21 Q. Dr. Pollay, I'm handing you what has  
22 been marked as Exhibit 8. This I believe is a copy  
23 of the notebook you were just describing. Does it  
24 appear so to you?

25 A. It appears so, yes.

1 Pollay - direct

2 Q. May I have this notebook back from you,  
3 please.

4 Dr. Pollay, I'm handing you two large  
5 black binders. What are these?

6 A. They are marked Plaintiff's Exhibits  
7 2375A and 2375B and they include large format  
8 advertising, sometimes known as tear sheets,  
9 apparently from a magazine like Life. They  
10 reproduce -- and some Xerox reproductions of  
11 similar ads. The first is a binder of Chesterfield  
12 ads and they seem to be those that were Plaintiff's  
13 exhibits in the Cipollone case. Binder B is a  
14 continuation of that and it's additional exhibits  
15 P-31 and following.

16 Q. Were these also exhibits to Rose  
17 Cipollone's deposition?

18 A. Yes, I believe they were, and it  
19 includes, in addition to Chesterfield ads, it  
20 includes L&M ads and there seem to be some missing  
21 pages and Old Gold ads and odds and ends.

22 Q. Were these materials that were in your  
23 possession or were they sent to you by Mrs.  
24 Walters?

25 A. I do not recall. I remember the last

1 Pollay - direct

2 time I saw them, they were part of the deposition  
3 cross examination. I believe they have been here.

4 Q. Did you send these notebooks back to  
5 Mrs. Walters within the past two or three weeks to  
6 include in your production?

7 A. No, I have not.

8 MR. CRIST: Can we go off the record  
9 just a second.

10 (Whereupon a discussion took place off  
11 the record.)

12 Q. Dr. Pollay, when was the last time that  
13 you reviewed these advertisements?

14 A. In the deposition in December in  
15 Vancouver.

16 Q. December 1990?

17 A. December 1990.

18 Q. Do you rely on these advertisements for  
19 your opinions in this case?

20 A. Yes. They are part of -- yes.

21 Q. May I have those back, please.

22 A. (Handing).

23 Q. Dr. Pollay, I'm going to hand you a  
24 stack of materials that are rubber banded  
25 together. What are these?

1 Pollay - direct

2 A. These are a set of documents, mostly  
3 Lennen & Newell Advertising Agency documents,  
4 related to the Kent campaigns and testing thereof.

5 Q. When did you receive these materials?

6 A. I can't recall exactly but they have  
7 been in my possession for several months.

8 Q. And you have reviewed them. Is that  
9 correct?

10 A. Yes, I have reviewed them.

11 Q. And how did you obtain these materials?

12 A. They were sent to me by Plaintiff's  
13 lawyers.

14 Q. Do you rely on these documents for your  
15 opinions in this case?

16 A. Yes, I do.

17 Q. Could you put the rubber band back  
18 around that stack, please. Just go ahead and keep  
19 them in front of you, if you don't mind.

20 I'm going to hand you a second stack of  
21 documents. Can you identify these, please?

22 A. Yes. These are documents with respect  
23 to True's marketing strategies in the 1970's  
24 including a historical review, 1971 to 1983. These  
25 are 1970's advertising and marketing documents for



1 Pollay - direct

2 True.

3 Q. Have you reviewed these documents?

4 A. Yes, I have.

5 Q. And were they sent to you at the same  
6 time as you received the others?

7 A. No, these I received more recently.

8 Q. When did you receive these?

9 A. I don't recall but it would have been  
10 within the last month.

11 Q. Are there any highlighting or  
12 underlining or annotations or markings on any of  
13 these documents other than what appears to have  
14 been on the original when it was reproduced?

15 A. No, they seem to be the original  
16 documents except for the markings of confidential  
17 that's been placed on them.

18 Q. Do you have copies of these documents,  
19 Dr. Pollay?

20 A. Yes, I do.

21 Q. These are not the ones, then, that are  
22 in your possession. Is that correct?

23 A. That's correct.

24 Q. The same question I have asked before,  
25 are the documents that are in your possession

1 Pollay - direct

2 different in any way from the ones that you have in  
3 front of you now?

4 A. Not that I know of.

5 Q. You haven't marked on them or  
6 highlighted them or underlined them in any way. Is  
7 that correct?

8 A. That's correct.

9 Q. Dr. Pollay, I'm going to hand you a  
10 third stack of documents. Could you put the rubber  
11 band back on that one, please.

12 (The witness complies.)

13 Q. What are these?

14 A. These are three additional documents,  
15 also 1970's, 1980, '79 and '80 documents for  
16 Lorillard marketing and advertising activities.

17 Q. Have you reviewed these documents?

18 A. Yes, I have.

19 Q. And when did you review them?

20 A. Within the past two weeks.

21 Q. Were copies of these documents sent to  
22 you?

23 A. Yes, they were.

24 Q. Did you request that copies of these  
25 documents be sent to you?

1 Pollay - direct

2 A. No, I did not mention -- did not  
3 request these specific documents.

4 Q. And the documents that you have in  
5 front of you are not the ones that you have in your  
6 possession. Is that correct?

7 A. That's correct.

8 Q. The documents that you have in your  
9 possession, are they different in any way from  
10 these?

11 A. No, they are not.

12 Q. To the extent have you changed them by  
13 underlining them, highlighting them, et cetera?

14 A. No, they are not. They are intact.

15 Q. Do you rely on these documents for your  
16 opinions in this case?

17 A. Yes, I do.

18 Q. Dr. Pollay, there is, if you will,  
19 there is another stack of documents immediately in  
20 front of you that has a rubber band around them.  
21 Would you pick that up, please. What are these?

22 A. These are some six documents of the  
23 R.J. Reynolds Tobacco Company or work done for them  
24 from the 1970's -- excuse me, ranging from 1969, I  
25 see, through 1981, at least.

1 Pollay - direct

2 Q. Have you reviewed these documents?

3 A. Yes, I have.

4 Q. When?

5 A. I don't recall exactly but relatively  
6 recently, within the past few weeks.

7 Q. Did you receive these documents at the  
8 same time that you received the last of the  
9 Lorillard documents you identified?

10 A. Yes, I did.

11 MR. ALLINDER: Would you mark this,  
12 please. Let me ask a question and then we will  
13 mark it.

14 Q. The same question I asked you before,  
15 do the copies of these documents that you have in  
16 your possession differ in any way from those that  
17 you have in front of you now?

18 A. Not to my knowledge.

19 (Whereupon the document was received  
20 and marked Exhibit 9 for identification.)

21 Q. Dr. Pollay, I'm going to hand you what  
22 has been marked Exhibit 9. Exhibit 9 is a four  
23 page document that I prepared which contains  
24 document identification numbers on it.

25 A. I have three pages here.

1 Pollay - direct

2 Q. Do you? There should be a fourth. The  
3 fourth page will be Exhibit 10. Excuse me.

4 (Whereupon the document was received  
5 and marked Exhibit 10 for identification.)

6 Q. I will now hand you the fourth page,  
7 which is Exhibit 10. These are documentation  
8 number lists. Do you see that?

9 A. Yes, I do.

10 Q. And they are intended to correspond to  
11 the document identification numbers of the four  
12 stacks of documents you have just identified. Will  
13 you take a moment, please, and look through that  
14 stack and see whether or not they do conform?

15 A. Certainly. Is it okay if I mark on  
16 this?

17 Q. On which, on the exhibit?

18 A. Maybe I shouldn't.

19 Q. Certainly, that's fine.

20 A. Or you can give me a working copy.

21 Q. You can put a checkmark next to those  
22 as you go through them. That's fine. The stack  
23 that you have will be the third page of Exhibit 9.  
24 I think you have the right page there.

25 A. Yes.

1 Pollay - direct

2 Q. Have you completed reviewing the list,  
3 Dr. Pollay?

4 A. Yes, I have.

5 Q. And do you agree that the list which  
6 are Exhibits 9 and 10 are the document  
7 identification numbers of the four stacks of  
8 documents we have previously discussed?

9 A. That's correct.

10 Q. Thank you. May I have that stack,  
11 please.

12 A. (Handing).

13 Q. Could you look next at this stack of  
14 materials here, please. Can you tell me what these  
15 are?

16 A. These seem to be deposition transcripts  
17 for Virginia Becker, Martha Rossi, Arthur Becker,  
18 Thomas Barbera and another volume for Martha  
19 Rossi. There are other deposition transcripts  
20 around, I know. These are some of the deposition  
21 transcripts in this case.

22 Q. You identified Virginia Becker and  
23 Arthur Becker, Martha Rossi and Thomas Barbera. Is  
24 that correct?

25 A. That's correct.

1 Pollay - direct

2 Q. And which one is that, is that a  
3 different one?

4 A. Zahn.

5 Q. William Zahn?

6 A. That's correct.

7 Q. And those are the deposition  
8 transcripts for those individuals?

9 A. That's correct.

10 Q. Do some of those binders contain  
11 summaries of their testimony?

12 A. Summaries of --

13 Q. Summaries of the deposition testimony?

14 A. Summaries? They may well. I would  
15 have to look through them.

16 Q. I think you will find them in the  
17 back.

18 A. Yes, they do.

19 Q. Can you tell me, please, which of these  
20 contain deposition summaries?

21 A. Summaries are included in Volume 80 for  
22 Arthur Becker; Volume 166, Thomas Barbera; in the  
23 back of Volume 48 for Martha Rossi; and in 79 for  
24 Virginia Becker; also in 78, 79 and the  
25 continuation of 78.

1 Pollay - direct

2 Q. Have you reviewed these depositions?

3 A. Yes, I have.

4 Q. And when did you do that?

5 A. Sometime in the spring.

6 Q. You had indicated, I think, as an  
7 answer to one of my earlier questions, that you had  
8 reviewed some other material in the spring. Is  
9 that correct?

10 A. That's correct.

11 Q. And were these depositions sent to you?

12 A. That's correct.

13 Q. These copies all were copies sent to  
14 you which you retained?

15 A. Not these copies, copies of these.

16 Q. How many times have you been sent  
17 materials from Mrs. Walters in connection with this  
18 case?

19 A. Two or three times. I received  
20 depositions and corporate documents on two separate  
21 occasions. I don't clearly recall whether I  
22 received the depositions in the first batch of  
23 corporate documents together. My best guess is on  
24 three separate occasions.

25 Q. Did you also review the summaries which



1 Pollay - direct

2 are contained in some of these depositions?

3 A. Not all of them, some of them.

4 Q. You did not prepare those summaries?

5 A. That's correct.

6 Q. You had identified earlier two  
7 occasions that you had received materials from Mrs.  
8 Walters, once in the spring and once within the  
9 past two weeks, two or three weeks.

10 A. That was in reference to the corporate  
11 documents, yes. Those came in two batches.

12 Q. When was the third occasion?

13 A. I may have received the ads and the  
14 depositions as a separate mailing, or they may have  
15 come in separate bundles. I can't recall.

16 Q. But were they about the same time?

17 A. Yes.

18 Q. There was not much difference in time  
19 between your receipt of the two bundles in the  
20 spring, if they, indeed, came separately?

21 A. That's correct.

22 Q. These depositions that you have in  
23 front of you, do they contain markings or  
24 highlightings, as far as you can tell?

25 A. They appear not to.

1 Pollay - direct

2 Q. Have you marked or highlighted or  
3 underscored your copies of these depositions?

4 A. No, I have not.

5 Q. So as far as you know, they are  
6 identical in appearance to the ones that you have  
7 in front of you?

8 A. That's correct.

9 Q. Do you rely on this deposition  
10 testimony for your opinions in this case?

11 A. Yes, I do.

12 Q. Do you rely on those deposition  
13 summaries that are in front of you now?

14 A. I have not read all of them, all of the  
15 summaries. The ones I have read I guess I do rely  
16 on. I find them, of course, redundant with the  
17 content of the depositions themselves.

18 Q. Which ones have you not read?

19 A. It will be a little difficult to be  
20 certain of that.

21 Q. You don't recall specifically which  
22 ones you looked at and which ones you didn't?

23 A. That's correct. When I received these,  
24 I read the depositions for myself and then in  
25 rereview, I used the summaries as a way of

1 Pollay - direct  
2 providing a summary for myself.

3 Q. How did you obtain these materials, and  
4 by that I mean these things that you specifically  
5 requested from Mrs. Walters or were they just  
6 included in materials that she sent to you?

7 A. All these materials were sent to me by  
8 the Plaintiff's attorneys.

9 Q. And without you having requested them  
10 specifically?

11 A. That's right. I did not make specific  
12 requests.

13 Q. May I have those materials, please, and  
14 I will move them aside.

15 A. (Handing).

16 Q. If you can reach, if you would take  
17 this stack next. Did you look through those  
18 materials, the ones you have in front of you?

19 MS. WALTERS: Off the record.

20 (Whereupon a discussion took place off  
21 the record.)

22 Q. Dr. Pollay, can you tell me what you  
23 have in front of you?

24 A. Yes, I have three volumes here of  
25 depositions with respect to Cipollone.

1 Pollay - direct

2 Q. What are the dates, please?

3 A. I'm looking for that. August 31, 1987;  
4 September 1, 1987; and September 2, 1987.

5 Q. Dr. Pollay, before you move on, let me  
6 ask you a question with respect to these volumes.  
7 In the back of one of them, I think you will find  
8 an errata sheet or pieces of paper which are called  
9 an errata sheet.

10 A. Yes.

11 Q. Did you prepare those?

12 A. Yes, I did.

13 Q. When did you do that?

14 A. When I received the deposition  
15 transcripts from the court reporter and was asked  
16 to do that.

17 Q. So sometime not long after the  
18 deposition was taken. Is that correct?

19 A. That's correct, late September or early  
20 October, perhaps, 1987.

21 Q. Do you agree that these three volumes  
22 contain no highlighting or annotations?

23 A. Yes, I do.

24 Q. Do the copies of the transcripts that  
25 you have in in your possession differ in any way

1 Pollay - direct

2 from the ones that you have in front of you now?

3 A. Not that I know of.

4 Q. Again, from the standpoint of whether  
5 you have highlighted them or marked on them in any  
6 fashion?

7 A. I don't recall. I haven't looked at  
8 these in several years.

9 Q. And the next materials that you are  
10 going to identify are what?

11 A. This seems to be the exhibit book  
12 associated with the deposition, again with respect  
13 to Cipollone done on November 30th and December 1,  
14 1990.

15 Q. And the next item, please?

16 A. Actually, I would say it must be one of  
17 the exhibit books because it starts with Exhibit  
18 6. The next items are three volumes, 54, 55 and  
19 56, of my testimony and cross examination with  
20 respect to RJR-MacDonald and Imperial Tobacco  
21 against the Attorney General of Canada.

22 Q. Dr. Pollay, these transcripts that you  
23 currently have in front of you have some changes in  
24 them, some handwritten notes in different  
25 locations. Can you find those and tell me whether

1 Pollay - direct

2 those are your markings or someone else's?

3 A. I find one marking on page 8405 which  
4 corrects an "and" to "an" on line 12.

5 Q. Is that yours or someone else's?

6 A. That's mine.

7 Q. There is no reason for you to identify  
8 each one, if you can just thumb through them and  
9 then tell me as a conclusion whether there are any  
10 markings in these transcripts that are not yours.

11 A. That will take an extensive review. In  
12 order to be clear, the question is do I note any  
13 markings that are not mine?

14 Q. That's correct.

15 A. Any marking that is mine I need not  
16 identify and describe?

17 Q. No, it's just the opposite, if you see  
18 some that aren't yours, just tell me so.

19 Did you send these transcripts to Mrs.  
20 Walters recently?

21 A. Yes, I did.

22 Q. And do you recall when you did that?

23 A. Just within the past two weeks, in  
24 order that they might be produced to you.

25 Q. As far as you know, copies of these

1 Pollay - direct  
2 transcripts that you have in your possession are  
3 identical to the ones that you have in front of you  
4 now?

5 A. That's correct.

6 Q. Dr. Pollay, since you have sent these  
7 copies to Mrs. Walters recently, I'm not going to  
8 ask you to continue your review for each one of the  
9 changes. I take it there were some changes in the  
10 version that you sent to Mrs. Walters. Is that  
11 correct? You had made some markings on the  
12 document?

13 A. At one stage, I did read my own  
14 testimony and made some small notations where the  
15 court reporter, who was bilingual, may have  
16 misheard the English.

17 Q. That's fine. Thank you. Is there  
18 another stack of materials in front of you that we  
19 have not identified that are transcripts?

20 A. These also seem to be incomplete in  
21 that my expert opinion as such does not seem to be  
22 appended to this, although it has been produced to  
23 you.

24 Q. What is the title of your expert  
25 opinion?

1 Pollay - direct

2 A. "The functions and management of  
3 cigarette advertising."

4 Q. Does that appear on your curriculum  
5 vitae?

6 A. Yes, it does, and that was produced in  
7 Vancouver.

8 Q. What are the materials that you now  
9 have in front of you?

10 A. Volume one and volume two of a  
11 deposition taken on April 9, 1990, in the case of  
12 Horton versus American Tobacco.

13 MR. ALLINDER: Mrs. Walters, as I  
14 understand it, these were the transcripts that you  
15 sent to my office yesterday. Is that correct?

16 MS. WALTERS: I believe so.

17 Q. Were these copies, Dr. Pollay, that you  
18 sent to Mrs. Walters recently?

19 A. I do not believe so.

20 Q. Do you have copies of these transcripts  
21 in your possession?

22 A. I do.

23 Q. Have you marked on your copies in any  
24 way?

25 A. No, I have not.



1 Pollay - direct

2 Q. May I have those materials, please,  
3 that you just identified.

4 A. (Handing).

5 Q. Dr. Pollay, you have, I think, one more  
6 stack of things in front of you. Could you pick up  
7 those?

8 A. I'm not sure which stack you are  
9 referring to. Everything?

10 Q. Why don't you take them all and we will  
11 go through them one at a time. It's a small  
12 stack.

13 Can you start by -- just start  
14 identifying the documents that you have in front of  
15 you.

16 A. The document on top is a reprint of an  
17 article of mine called "Signs and symbols in  
18 American cigarette advertising, a historical  
19 analysis of the use of pictures of health." It's a  
20 published version of the report described as  
21 "Themes and tactics," the basis for the Cipollone  
22 testimony, and it is identical to that except for  
23 some introductory paragraphs.

24 MR. ALLINDER: Mrs. Walters, as I  
25 understand it, this was the document that was

1 Pollay - direct  
2 produced to us today and was not included last  
3 Thursday. Is that correct?

4 MS. WALTERS: Yes.

5 Q. The next document, please, Dr. Pollay?

6 A. Should we do these separately?

7 Q. Would you please.

8 A. The first is a chronology of Peter  
9 Rossi, two pages, providing dates of birth,  
10 marriage, education and the like.

11 Q. Did you prepare that document?

12 A. No, I did not.

13 Q. Have you reviewed it?

14 A. Yes, I have.

15 Q. How did you obtain it?

16 A. It was provided by the Plaintiff's  
17 attorneys.

18 Q. When did you receive it?

19 A. I believe at the same time I received  
20 the depositions.

21 MR. ALLINDER: Mark that, please.

22 (Whereupon the document was received  
23 and marked Exhibit 11 for identification.)

24 Q. Dr. Pollay, I'm handing you what has  
25 been marked Exhibit 11. Is that a copy of the

1 Pollay - direct

2 document you just discussed and described?

3 A. Yes, it is.

4 Q. Can you identify the next document,  
5 please?

6 A. The next document is deposition  
7 testimony regarding smoking habits of Peter Rossi.  
8 It's a chronology of Mr. Rossi's smoking habits.

9 Q. Did you prepare that document?

10 A. No, I did not. I identify it as being  
11 prepared by Budd, Larner.

12 Q. Have you reviewed it?

13 A. Yes, I have.

14 Q. When did you review it?

15 A. Sometime in the spring or summer.

16 Q. Do you rely on it for your opinions in  
17 this case?

18 A. Yes, to the extent it's redundant with  
19 the depositions. It is a summary of the  
20 depositions.

21 MR. ALLINDER: Mark that, please.

22 (Whereupon the document was received  
23 and marked Exhibit 12 for identification.)

24 Q. Dr. Pollay, I'm handing you Exhibit  
25 12. Is that a copy of the document you just

1 Pollay - direct  
2 described?

3 A. Yes, it is.

4 Q. You indicated a minute ago that you  
5 rely on this document to the extent that it is  
6 redundant with the deposition testimony you have  
7 reviewed. Does that mean that you do not rely on  
8 it if it does not reflect the deposition testimony  
9 you reviewed?

10 MS. WALTERS: Can you read that  
11 question back, please.

12 (Whereupon the record was read.)

13 A. I believe that's the case. I have a  
14 little difficulty with the double negatives in the  
15 construction of that question. But it seems to be  
16 true.

17 Q. Do you recall whether there is any  
18 information in that document that is inconsistent  
19 with the deposition testimony you reviewed?

20 A. No, I do not.

21 Q. Could you identify the next document in  
22 front of you, please?

23 A. Yes. The next document, actually there  
24 are two copies of the next document. It's a  
25 document of mine listing the research on cigarette

50780 4714

1 Pollay - direct

2 promotion as of August 1991, one copy marked to  
3 indicate those items that are new since the  
4 Cipollone production of 12/90, December 1990.

5 Q. These documents are identical except  
6 for the annotations you just indicated?

7 A. Yes, they are.

8 MR. ALLINDER: Mark these, please.

9 (Whereupon the documents were received  
10 and marked Exhibit 13 and Exhibit 14 for  
11 identification.)

12 Q. Dr. Pollay, I hand you Exhibits 13 and  
13 14. Are these copies of the two documents you just  
14 described?

15 A. Yes, they are.

16 Q. These documents, Dr. Pollay, you  
17 prepared. Is that correct?

18 A. That's correct.

19 Q. Are these documents essentially  
20 excerpts from information that is contained in your  
21 curriculum vitae?

22 A. That's correct.

23 Q. And these materials are those  
24 publications and writings of yours that pertain to  
25 cigarette advertising and promotion?

1 Pollay - direct

2 A. That's correct.

3 Q. What is the reason that you prepared  
4 this particular document?

5 A. I get many requests for research and  
6 research reprints and many of those are from people  
7 who are only interested in cigarette advertising,  
8 not my other research work.

9 Q. How many such requests have you  
10 received in the past six weeks?

11 A. I can't be certain but I would say 15  
12 to 20, maybe more.

13 Q. And by category, if you can, who are  
14 the people that make such requests?

15 A. Almost entirely academics, the people  
16 engaged in research activities, from a diversity of  
17 fields; other people like myself who function in  
18 business schools and consumer behavior research; it  
19 also includes people working in history, public  
20 relations, medicine.

21 Q. Have you received any such request from  
22 attorneys who represent plaintiffs in cigarette  
23 litigation?

24 A. Occasionally. It's much more rare.

25 Q. Who specifically, do you recall?

1 Pollay - direct

2 A. No, I don't recall by name but I do  
3 recall there was a fellow in New Orleans who called  
4 me by phone and asked me to send him some stuff,  
5 which I did, but we have had no correspondence so I  
6 have no file for him. But it's almost exclusively  
7 academics, who themselves are doing academic  
8 research.

9 Q. Does Professor Daynard have a copy of  
10 these documents?

11 A. I doubt that, unless someone else has  
12 provided it to him.

13 Q. Not to your knowledge, at least?

14 A. Not to my knowledge.

15 Q. Dr. Pollay, can you identify the next  
16 document that you have in front of you, please?

17 A. The next document is a graphic  
18 representation of Peter Rossi's smoking chronology.

19 Q. Did you prepare that document?

20 A. No, I did not.

21 Q. Have you reviewed it?

22 A. Yes, I have.

23 Q. When did you receive it?

24 A. I received a copy of this with the  
25 original depositions.

1 Pollay - direct

2 Q. And the time of that would have been  
3 what?

4 A. It was springtime.

5 Q. Do you rely on this document for your  
6 opinions in this case?

7 A. Yes, I do.

8 MR. ALLINDER: Would you mark this,  
9 please.

10 (Whereupon the document was received  
11 and marked Exhibit 15 for identification.)

12 Q. Dr. Pollay, I'm handing you Exhibit  
13 15. Is this a copy of the document you have  
14 described with the exception of the fact that the  
15 one that you have in front of you is in color and  
16 Exhibit 15 is black and white?

17 A. That's correct, and you have also added  
18 a cover page to identify it.

19 Q. If you will, can you look through the  
20 remainder of the materials in front of you and see  
21 whether the cover page that you have just described  
22 is included?

23 A. No, it seems not to be.

24 Q. That's fine. Thank you.

25 Can you identify the next document in



1 Pollay - direct  
2 front of you, please?

3 A. The next document is a document called  
4 "Recent research related activity (as of September  
5 1991)" from my office.

6 Q. And what information does this document  
7 contain?

8 A. It contains a description of my  
9 research activity, primarily that during the last  
10 five or six years, especially with respect to  
11 advertising and its history and social effects.

12 Q. This research includes or is about  
13 subjects other than cigarette advertising and  
14 promotion?

15 A. That's correct.

16 MR. ALLINDER: Would you mark that,  
17 please.

18 A. In addition, it also includes cigarette  
19 related research.

20 (Whereupon the document was received  
21 and marked Exhibit 16 for identification.)

22 Q. Is the information contained on this  
23 document also contained within your curriculum vitae?

24 A. I believe so. It should be.

25 Q. What is the purpose of this document?

1 Pollay - direct

2 A. To be able to communicate briefly to  
3 others who are interested in the scope and nature  
4 of my research activities during recent years.

5 Q. I take it by that that this is  
6 essentially an abbreviated C.V. with the most  
7 recent information included?

8 A. That's correct. The C.V. itself is  
9 nearly 20 pages long because it includes my entire  
10 career.

11 Q. I'm handing you Exhibit 16. Is that a  
12 copy of the document you have just described?

13 A. No, it is not. There are two pages  
14 missing.

15 Q. Which two pages are those?

16 A. The original is a two sided document  
17 and only the face sides have been copied, so pages  
18 three and five seem to be missing.

19 Q. Can you identify the next document in  
20 front of you, please?

21 A. The next document is a curriculum  
22 vitae.

23 Q. And this is your most recent curriculum  
24 vitae?

25 A. That's correct, as of the first of

1 Pollay - direct  
2 September, 1991.

3 Q. And it's current through that date, I  
4 take it?

5 A. Yes.

6 Q. And your C.V. contains an accurate  
7 description of all of your writings and  
8 publications. Is that correct?

9 A. Yes, it does.

10 MR. ALLINDER: Would you mark this,  
11 please.

12 A. And that, of course, would be redundant  
13 with the information provided in the recent  
14 research, the research on cigarette promotions.

15 (Whereupon the document was received  
16 and marked Exhibit 17 for identification.)

17 Q. I'm handing you Exhibit 17. Is that a  
18 copy of your most recent curriculum vitae?

19 A. Yes, it is.

20 Q. And if you were to revise your C.V.  
21 today, recognizing, of course, that you prepared it  
22 only a short time ago, will you make any changes in  
23 it?

24 A. No, I would not.

25 Q. Can you identify the next document in

1 Pollay - direct  
2 front of you, please?

3 A. So we are not going to -- this is an  
4 exhibit but this is the one that's an invalid copy.

5 Q. That's the one that doesn't contain the  
6 right pages or all the pages.

7 A. Yes. The next document is a typescript  
8 of an article called "Separate but not equal:  
9 Racial segmentation in cigarette advertising."

10 Q. Is this article in publication?

11 A. It's currently in review at the Journal  
12 of Advertising.

13 Q. This is an article that you prepared, I  
14 take it?

15 A. That's right.

16 Q. In conjunction with the co-authors?

17 A. That's right.

18 Q. What is the date on the document that  
19 you have in front of you?

20 A. August 28, 1991.

21 Q. It indicates second revision below  
22 that. Is that correct?

23 A. That's correct.

24 Q. Could you identify the next document in  
25 front of you, please?

1 Pollay - direct

2 A. The next document are Xerox copies of  
3 my handwritten notes on some of the corporate  
4 documents we have previously identified, the Lennen  
5 & Newell Advertising Agency documents, primarily,  
6 with respect to Kent in the 1960's.

7 Q. When did you prepare these notes?

8 A. I don't recall. They are not dated,  
9 but it would have been in the spring sometime, when  
10 I first received those documents, first had the  
11 opportunity to take the time to review them.

12 Q. How long after you received the  
13 documents from Mrs. Walters did you prepare these  
14 notes?

15 A. I don't recall.

16 MR. ALLINDER: Mark that, please.

17 (Whereupon the document was received  
18 and marked Exhibit 18 for identification.)

19 Q. I'm handing you Exhibit 18. Is that a  
20 copy of the document you have just described?

21 A. Yes, it is.

22 Q. Thank you. And would you identify the  
23 next document?

24 A. Yes. The next document -- these are  
25 separate documents? They are two component parts

1 Pollay - direct  
2 of a publication in Media & Values. The first  
3 part, an article entitled "Cigarettes Under Fire:  
4 Blowing Away the PR Smoke Screen" that appeared in  
5 the spring/summer 1991 issue.

6 Q. I'm sorry, did you identify the  
7 publication?

8 A. Media & Values is the name of the  
9 publication.

10 Q. And the second?

11 A. The second is what the publishers call  
12 a sidebar, a set of illustrations with notations,  
13 and it's given a title "The more things change."

14 Q. Did that appear in the same  
15 publication?

16 A. It did, it appeared on page 15, so the  
17 article actually surrounds the sidebar.

18 Q. Did you prepare the sidebar?

19 A. I provided the artwork from which they  
20 chose these illustrations.

21 Q. So the text is not yours in the sense  
22 that you did not choose what text accompanied each  
23 of the illustrations?

24 A. That's correct. I did provide some  
25 draft comments about the illustrations but they

1 Pollay - direct  
2 authored the final versions.

3 Q. And the next document in front of you,  
4 can you identify it, please?

5 A. It's a cover letter, indicates it's  
6 documents responsive to a supplemental document  
7 request regarding armed services activities from a  
8 James Kearney dated April 11, 1990.

9 Q. With enclosures?

10 A. That's correct, and perhaps a dozen  
11 pages of enclosures.

12 Q. What is the title or caption on the  
13 first enclosure?

14 A. The first enclosure is the Army & Navy  
15 price lists for the Liggett & Myers Tobacco Company  
16 as of April 1, 1943. That appears to be a three  
17 page document including the cover page.

18 Q. Do you have any additional documents in  
19 front of you that you have not identified?

20 A. No, I do not.

21 MR. ALLINDER: Mrs. Walters, have we  
22 missed anything in the September 12th production  
23 that you know of?

24 MS. WALTERS: Only what we discussed  
25 off the record, which is several additional

1 Pollay - direct  
2 transcripts of the Cipollone testimony of Dr.  
3 Pollay, the last day or two from his most recent  
4 deposition in Cipollone; I believe one volume of  
5 the exhibits, as well.

6 A. All my documents have been produced.  
7 That is all the things I have authored, including  
8 my expert opinion in the Canadian trial and the  
9 scientific smokescreen and anything else at all.

10 Q. Do you agree, Dr. Pollay, that I have  
11 not failed to identify any materials that you  
12 produced to us on September 12th?

13 A. I believe so. It's just not sitting in  
14 front of us here.

15 Q. I'm sorry, is that an exception? Is  
16 there something else that is not in front of us  
17 here?

18 A. You may have identified all of that but  
19 we previously commented about material sitting in  
20 front of us and there are materials that have been  
21 produced that are not sitting in front of us.

22 Q. On September 12th or in Vancouver?

23 A. In Vancouver.

24 Q. So as far as you know, the materials  
25 that were produced to defendants last week are

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1 Pollay - direct

2 those that we have in front of us and that we have  
3 identified?

4 A. As far as I know. I wasn't here.

5 Q. Okay.

6 MR. ALLINDER: And there are an  
7 additional four black binders in front of you which  
8 I believe Mrs. Walters, you stated that were not  
9 produced last Thursday. Is that correct?

10 MS. WALTERS: Correct. I believe Mr.  
11 Olney also spoke on the telephone last week about  
12 the fact that Dr. Pollay was going to be listening  
13 and viewing the videotape that was supplied I think  
14 of Kent and True ads as well as listening to the  
15 tape of the Kent and True ads, the audiotape.

16 Q. Dr. Pollay, have you reviewed these  
17 materials yet?

18 A. I have reviewed some of the material.  
19 I have not had the opportunity to review all of  
20 them.

21 Q. Which have you reviewed so far? Did  
22 you start on the audiotapes or the videotapes  
23 first?

24 A. Videotapes.

25 Q. When did you start your review?

1 Pollay - direct

2 A. The review of those specific videotapes  
3 I did this morning but many of the ads were  
4 familiar to me from having seen the campaigns both  
5 in print and from my own recollection of the  
6 television materials that I have seen elsewhere.

7 MS. WALTERS: He would also have  
8 reviewed the Cipollone videotape in connection with  
9 Cipollone which he does not have, is in our  
10 possession, and that would be part of the materials  
11 he would rely upon in this case.

12 Q. Have you reviewed that recently, Dr.  
13 Pollay, or is that something you reviewed sometime  
14 ago?

15 A. The Cipollone videotapes?

16 Q. That's correct.

17 A. It has not been too recently but I have  
18 seen the videotape again since the trial, since the  
19 Cipollone trial.

20 MR. CRIST: May I make a quick  
21 comment. I don't know what videotape it is that  
22 Miss Walters just referred to. Reynolds was not a  
23 party to Cipollone and it is something that I have  
24 not seen, to the best of my knowledge.

25 MS. WALTERS: If you want, I will

1 Pollay - direct  
2 describe it. It's a videotape of Liggett  
3 television advertisements that were introduced into  
4 evidence, I think, some of which were introduced  
5 into evidence in Cipollone.

6 MR. CRIST: It has not been produced to  
7 us and I don't know what it is.

8 MS. WALTERS: It's here. If you want  
9 to look at it any time during the next three days,  
10 you can.

11  
12 BY MR. ALLINDER:

13 Q. The four binders that you have in front  
14 of you, Dr. Pollay, what are they?

15 A. A hard binder identified as Plaintiff's  
16 Exhibit 75 which appears to be print versions of  
17 slides that I showed in the Cipollone trial, being  
18 ads for cigarettes from the turn of the century  
19 forward.

20 Q. Are these materials which you  
21 collected?

22 A. That's correct.

23 Q. Dr. Pollay, I think this is a good time  
24 for us to take our late morning break, 15 minutes.

25 (Whereupon a recess was taken.)

1 Pollay - direct

2 MR. ALLINDER: Would you mark this,  
3 please.

4 (Whereupon the document was received  
5 and marked Exhibit 19 for identification.)

6 Q. Dr. Pollay, I'm handing you Exhibit  
7 19. Is that a copy of the April 11, 1990, letter  
8 from Mr. Kearney and enclosures that you had  
9 described earlier?

10 A. Yes, it is.

11 (Whereupon documents were received and  
12 marked Exhibits 20 and 21 for identification.)

13 Q. I'm handing you Exhibits 20 and 21.  
14 Are these copies of the Media & Values publication  
15 you identified earlier?

16 A. Yes, they are.

17 Q. And I apologize, Dr. Pollay, I have  
18 forgotten, what is it that you called Exhibit 21?

19 A. It's referred to as a sidebar.

20 Q. Dr. Pollay, I think you previously  
21 indicated that we have now identified the materials  
22 that you produced to us on September 12th and  
23 thereafter.

24 A. I believe so.

25 Q. Is it correct that the documents and

1 Pollay - direct  
2 materials that you produced to us on September 12th  
3 include all of the information regarding Peter  
4 Rossi specifically that you are relying on for your  
5 opinions in this case?

6 MS. WALTERS: You mean the 12th and the  
7 5th? He is relying on both.

8 MR. ALLINDER: About Peter Rossi  
9 specifically.

10 MS. WALTERS: All of the documents in  
11 this case relate to Peter Rossi.

12 MR. ALLINDER: Do you have an  
13 objection, Cindy?

14 MS. WALTERS: I just want to be sure  
15 that your question is clear. You are only asking  
16 him whether the documents produced on the 12th  
17 relate to his opinions about Peter Rossi?

18 MR. ALLINDER: I'm asking him whether  
19 the information produced by him on September 12th  
20 and thereafter include all of the information you  
21 rely on about Peter Rossi specifically for your  
22 opinions in this case?

23 A. It's all of the information I rely on  
24 for his facts. I have other sources of information  
25 for what kind of advertising and news he well might

1 Pollay - direct

2 have been exposed to.

3 Q. I understand the distinction and to  
4 make sure we understand each other, the information  
5 that you produced on September 5th, which was the  
6 Cipollone materials --

7 A. And my own research.

8 Q. -- and your own research, do not  
9 include materials that relate specifically to Peter  
10 Rossi in the sense that they are not materials that  
11 have his name on it or pertain to him, describe him  
12 in any way. Is that correct?

13 A. That's correct.

14 Q. And also the materials that we have  
15 gone through and identified that you produced on  
16 September 12th are all materials that you have  
17 reviewed and rely on for your opinions in this  
18 case. Is that correct?

19 A. That's correct.

20 Q. Let me find for you a copy of Exhibit 2.  
21 Do you have Exhibit 2 in front of you?

22 A. Yes, I do.

23 Q. If you will turn, please, to the  
24 production request, where it starts on the third  
25 from the last page, I would like to go through this

1 Pollay - direct

2 very quickly with you. Paragraph one asks you to  
3 produce all documents, materials reviewed and  
4 relied upon in connection with the anticipated  
5 testimony at trial, summarized in the letter of  
6 Cynthia Walters, Esq., dated March 15, 1991,  
7 including, but not limited to, all research,  
8 analyses, drafts, notes, reports, scripts, work  
9 papers, references, note cards, summaries,  
10 outlines, published and unpublished articles,  
11 correspondence, advertising, whether in hard copy,  
12 audio or videotape, slide, transparency, computer  
13 generated or any other format. Do you see that?

14 A. Yes.

15 Q. Do you have materials other than what  
16 you have produced to defendants that are responsive  
17 to this request?

18 A. No, I do not.

19 Q. Paragraph --

20 A. There are other materials, of course,  
21 that I have been privileged to see in connection  
22 with other court action which I'm not at liberty to  
23 produce.

24 Q. Have you reviewed and do you rely on  
25 any of those materials for your opinions in this

1 Pollay - direct  
2 case?

3 A. No, I do not believe they are -- I do  
4 not believe so. They are not specific to Peter  
5 Rossi, they are part of my general education.

6 Q. And your answer, as I understand it, is  
7 no, you do not rely on those materials for your  
8 opinions in this case?

9 MS. WALTERS: No, his answer is what it  
10 was and that is they are not specific to Peter  
11 Rossi but they form a part of his general  
12 background and knowledge. Do you have another  
13 question?

14 MR. ALLINDER: I do.

15 Q. Do you rely on those materials that you  
16 have not produced for your opinions in this case?

17 A. Again, not for opinions that are  
18 specific to Peter Rossi but they have influenced my  
19 opinions about the functions and management of  
20 cigarette advertising in general.

21 Q. And these are materials that you are  
22 not at liberty to produce because of  
23 confidentiality orders or court orders?

24 A. That's correct.

25 Q. In other matters, in other litigation?



1 Pollay - direct

2 A. That's correct.

3 Q. And which cases are you referring to?

4 A. The Horton case and the case of  
5 RJR-MacDonald versus the Attorney General.

6 Q. And these documents that you are  
7 referring to were documents produced by defendants  
8 in Horton. Is that correct?

9 A. That's correct.

10 Q. And by plaintiff in the Canadian ad ban  
11 litigation?

12 A. That's correct.

13 Q. Paragraph 1A asks you to produce  
14 advertisements and articles appearing in various  
15 magazines and newspapers read by Peter Rossi and  
16 all memoranda, summaries and notes concerning  
17 them. Do you see that?

18 A. Yes.

19 Q. Do you have any materials other than  
20 what you have produced to defendants that are  
21 responsive to this request?

22 A. No, I do not.

23 Q. What magazines and newspapers did Peter  
24 Rossi read?

25 A. It's my understanding that he read Time

1 Pollay - direct

2 and Life, he read the Wall Street Journal and the  
3 New York Times, New York Daily News and a variety  
4 of other trade magazines.

5 Q. What trade magazines are you referring  
6 to?

7 A. I don't recall the titles.

8 Q. What kind of trade are you discussing?

9 A. Things related to his professional  
10 activities.

11 Q. And which trade would that have been?

12 A. It could have been things related to  
13 the dairy industry or things related to his  
14 responsibilities in selling.

15 Q. Would that include marketing materials?

16 A. It might. That's a presumption.

17 Q. Do you know whether he subscribed to  
18 any of these publications?

19 A. I do not recall.

20 Q. Do you know whether his reading habits  
21 changed over the years in the sense that was he  
22 reading different materials at one time of his life  
23 as opposed to another?

24 A. He moved, so I'm sure his local  
25 newspaper reading habits would have changed.

1 Pollay - direct

2 Q. The publications that you have listed,  
3 was he reading them before 1950?

4 A. Before 1950? Yes, I assume he was  
5 certainly reading local newspapers like the New  
6 York Daily News.

7 Q. Have you selected articles appearing in  
8 various magazines and newspapers that Peter Rossi  
9 read?

10 A. No, I have not.

11 Q. Paragraph 1B asks you to produce  
12 various internal documents produced by defendants  
13 including documents pertaining to the advertising  
14 and marketing of True and Kent cigarettes and all  
15 memoranda, summaries and notes concerning them. Do  
16 you see that?

17 A. 1D you refer to?

18 Q. I'm sorry, 1B.

19 A. 1B?

20 Q. As in bravo.

21 A. Yes, I do see that.

22 Q. Do you have documents other than what  
23 you have produced to defendants that are responsive  
24 to this request?

25 A. No, I do not.

1 Pollay - direct

2 Q. Paragraph 1C asks you to produce all  
3 documents and materials relating to governmental  
4 action, legislation, regulation, governmental  
5 reports and news stories pertinent to cigarette  
6 smoking and health. Do you see that?

7 A. I do.

8 Q. Do you have any documents or materials  
9 responsive to this request that you have not  
10 produced to defendants?

11 A. No, not in addition to the  
12 chronological notes I provided.

13 Q. Chronological notes that were provided  
14 in Cipollone. Is that correct?

15 A. That's correct, and also cigarette ads  
16 through the advertising agents, a similar kind of  
17 document.

18 Q. And that also has been produced to  
19 defendants?

20 A. That's correct.

21 Q. What is your definition of pertinent to  
22 smoking and health?

23 A. Either stories about efforts on the  
24 part of public health officials like the Surgeon  
25 General or the cigarette manufacturers and the

1 Pollay - direct

2 purveyors of smoking, so news about legislation or  
3 proposed legislation.

4 Q. Dealing with what subjects?

5 A. Dealing with cigarettes and cigarette  
6 advertising.

7 Q. What is the health portion of that  
8 phrase, what does that mean, the phrase pertinent  
9 to smoking and health?

10 A. Some of the stories would relate to  
11 alleged health consequences of smoking.

12 Q. Does your definition of pertinent to  
13 smoking and health include all materials that  
14 relate to cigarette advertising and promotion?

15 A. I have provided all those materials  
16 that I have with the thought that they might be  
17 judged by you people as pertinent to smoking and  
18 health. Not all of the cigarette advertising  
19 information is necessarily -- has a health aspect  
20 to the story but I provided everything.

21 Q. Paragraph 1D asks you to produce all  
22 documents and materials relating to marketing and  
23 advertising decisions made by cigarette firms  
24 including decisions about smokers' understanding  
25 and awareness of health concerns related to

1 Pollay - direct

2 cigarette use. Do you see that?

3 A. Sorry, I thought you were still  
4 clarifying.

5 Q. No, do you see paragraph 1D in the  
6 production request?

7 A. Yes.

8 Q. Do you have materials which you have  
9 not produced to defendants that are responsive to  
10 this request?

11 A. No, I do not.

12 Q. You used the terms in your expert  
13 report "understanding" and "awareness." Are they  
14 synonymous or different?

15 A. I used the term "understanding and  
16 awareness"? I don't recall that.

17 Q. Can you pick up a copy, please, in  
18 front of you of Exhibit 3? It should be right on  
19 the bottom there, I think.

20 A. This?

21 Q. March 15th letter. If you will look,  
22 please, on page two of the third complete paragraph  
23 from the bottom at the end of that paragraph, there  
24 is a reference to decisions about smokers'  
25 understanding and awareness of health concerns

1 Pollay - direct  
2 related to cigarette use. My question is are  
3 "awareness" and "understanding" synonymous, as you  
4 use them?

5 A. Again, this is not my authorship, this  
6 is something written by Cynthia Walters.  
7 Distinctions certainly can be made between  
8 "awareness" and "understanding."

9 Q. Did you review this letter with Mrs.  
10 Walters before March 15, 1991?

11 A. I don't recall reviewing it in detail.  
12 I don't remember seeing it before it was sent.

13 Q. When did you see it?

14 A. I don't recall.

15 Q. Was it after March 15, 1991?

16 A. It would be my recollection it probably  
17 came with the bundle of materials and the  
18 confidentiality forms that I had to sign.

19 Q. Did you review the letter at that time?

20 A. I would have read it, yes.

21 Q. Is it an accurate reflection of your  
22 opinions in this case?

23 A. It doesn't specify my opinions, it  
24 specifies the topics on which I may be expected to  
25 testify.

1 Pollay - direct

2 Q. And the paragraph that I pointed out to  
3 you in the expert report uses the terms  
4 "understanding" and "awareness." In that context,  
5 is there a difference, in your opinion, between the  
6 meaning of those two terms?

7 A. Yes, there would be in the way I would  
8 use those words.

9 Q. And what is the difference?

10 A. I would use the term "understanding" to  
11 reflect a deeper level of knowledge than awareness.

12 Q. Dr. Pollay, looking at Exhibit 2 again,  
13 paragraph 1E asks you to produce all documents and  
14 materials relating to the pertinent literature,  
15 continuing research, trade publications and  
16 information reasonably relied upon by members of  
17 your profession. Do you see that?

18 A. Yes.

19 Q. And again, do you have materials  
20 responsive to this request that you have not  
21 produced to defendants?

22 MS. WALTERS: Just so you are aware, we  
23 have an agreement that he was not required nor did  
24 this intend to require him to produce any pertinent  
25 literature that wasn't immediately accessible to



1 Pollay - direct

2 him or in his possession, correct?

3 MR. ALLINDER: That is correct, without  
4 limitation.

5 MS. WALTERS: I think your question  
6 could be misleading to him.

7 A. So that I can be sure that I'm clearly  
8 understood, I have produced documents that do  
9 provide my notes taken from various pertinent  
10 literature and I have a general knowledge of the  
11 ongoing literature and consumer behavior  
12 marketing. I did not attempt to produce back  
13 volumes of all journals or all those sources I cite  
14 in my working papers but I provide all of the  
15 references to the cigarette related work that I  
16 have taken note of.

17 Q. What is the pertinent literature that  
18 you refer to?

19 A. It's both the materials that are noted  
20 that are specific to the topic of cigarette  
21 advertising and then it's the broader literature of  
22 marketing strategy and consumer behavior as  
23 reflected in the textbooks and journals of the  
24 field.

25 Q. And the trade publications you refer

1 Pollay - direct  
2 to, what are those?

3 A. Things like Advertising Age, Canada's  
4 equivalent, Marketing Magazine, and an older  
5 journal called Printers' Ink.

6 Q. So the trade we are referring to or you  
7 are referring to here is advertising and  
8 marketing. Is that correct?

9 A. That's correct; consumer behavior,  
10 advertising marketing and consumer behavior. The  
11 journals make sometimes subtle distinctions over  
12 time.

13 Q. Are you doing any continuing research  
14 that relates to your opinions in this case that you  
15 have not previously identified to defendants?

16 A. No. Cigarettes through the Advertising  
17 Age is an ongoing effort and should at a later date  
18 the preemption issue be clarified so that that's  
19 relevant, I may at that time have additional  
20 information.

21 Q. And I believe you told us earlier that  
22 the period that you are continuing to work on for  
23 cigarettes through the Advertising Age is the  
24 period after 1964?

25 A. That's correct.

1 Pollay - direct

2 Q. What periods of time are you currently  
3 working on, is it '64 through the present?

4 A. We are working toward that. We are  
5 working still in the late sixties.

6 Q. Dr. Pollay, paragraph 1F asks you to  
7 produce all documents and materials relating to  
8 Federal Trade Commission reports regarding  
9 cigarette advertising, press releases, cigarette  
10 advertising, industry advertising, market research  
11 studies, marketing reports, newspaper articles,  
12 public relations proposals, FTC actions against  
13 cigarette manufacturers, and other documents  
14 produced by Philip Morris, Lorillard, Liggett, R.J.  
15 Reynolds, The Tobacco Institute, and the Council  
16 for Tobacco Research. Do you see that?

17 A. Yes.

18 Q. Do you have materials responsive to  
19 this request that you have not produced to defendants?

20 A. Not to my knowledge. I produced  
21 everything.

22 Q. The Federal Trade Commission reports  
23 that you refer to or which is referred to in Mrs.  
24 Walters' March 15th letter, are those all  
25 referenced in your publications, your expert

1 Pollay - direct

2 reports that were enclosed and produced to  
3 defendants?

4 A. I don't know whether they all would  
5 be. There are several that are and they are  
6 chronological notes. I do remember that there were  
7 others I saw in conjunction with the Cipollone  
8 proceedings. I believe they are referenced in the  
9 chronological notes.

10 Q. Any that were not referenced, would  
11 they have been produced to defendants in Cipollone?

12 A. I believe so. I withheld nothing.

13 Q. Paragraph two of the production  
14 request --

15 MS. WALTERS: Also that's part of the  
16 public literature, Mr. Allinder.

17 Q. Part two of the production request asks  
18 for all documents and materials relating to your  
19 anticipated expert testimony at trial on your work  
20 in this case received from or provided to counsel  
21 for the plaintiff or any other person or anyone  
22 acting on behalf of counsel or other expert  
23 witnesses in this action, including but not limited  
24 to the following material referred to in your  
25 report: "Various transcripts of the relatives and

1 Pollay - direct  
2 acquaintances of Peter Rossi."

3 Do you see that?

4 A. Yes, I do.

5 Q. Have you not produced to defendants any  
6 materials in your possession that are responsive to  
7 this request?

8 A. No.

9 Q. Have you reviewed deposition  
10 transcripts in this case that you do not rely on?

11 A. Yes.

12 Q. Which ones?

13 A. Rose, Rose Rossi, Peter's mother.

14 Q. And why is it that you don't rely on  
15 her testimony?

16 A. I found her quite disoriented on  
17 several simple matters of fact, things like when  
18 her husband had died or who was her daughter or  
19 granddaughter or great granddaughter and similar  
20 matters and I actually didn't even finish reading  
21 the manuscript because after encountering a large  
22 number of those, I thought it was an unreliable  
23 source.

24 Q. So you found that testimony to be  
25 unreliable, essentially, in its entirety and

1 Pollay - direct

2 discounted it?

3 A. She was quite old and there was many  
4 indications that she was quite confused.

5 Q. You have not, I take it, Dr. Pollay,  
6 reviewed expert reports for other witnesses for  
7 plaintiff in this case?

8 A. That's correct.

9 Q. And you have not reviewed deposition or  
10 trial testimony for such witnesses. Is that  
11 correct?

12 A. That's correct.

13 Q. Since December 1 of 1990, have you been  
14 in communication with Dr. Jeffrey Harris?

15 A. No, I have not.

16 Q. Since December 1, 1990, have you been  
17 in communication with Dr. Joel Cohen?

18 A. No, I have not.

19 Q. Have you been in communication since  
20 that date with any other expert witness about  
21 plaintiff in this case?

22 A. I do not even know who the other expert  
23 witnesses listed by plaintiff are.

24 Q. Have you been in communication with Dr.  
25 Saul Schiffman?

1 Pollay - direct

2 A. No, I have not.

3 Q. Did you review materials in preparation  
4 for your deposition today?

5 A. Yes, I have.

6 Q. Can you tell me, please, what materials  
7 you reviewed?

8 A. I reviewed my own writings and reviewed  
9 the depositions, reviewed the various documents  
10 related to Kents and True, especially, all of those  
11 documents I had available to me.

12 Q. When did you conduct this review?

13 A. Some of the material was reviewed  
14 earlier in the summer and to the best of my  
15 ability, in the available time I reviewed them  
16 again, things like the depositions, during the past  
17 week.

18 Q. Have you reviewed any materials in  
19 preparation for your deposition that you have not  
20 produced to defendants?

21 A. No, I have not.

22 Q. Dr. Pollay, paragraph three of the  
23 production request asks you to produce copies of  
24 transcripts of all sworn testimony given by you and  
25 copies of all reports prepared by you in any state

1 Pollay - direct  
2 or federal court proceeding or hearing before any  
3 state or federal legislative body, including all  
4 deposition and trial testimony and all affidavits  
5 and sworn statements provided, however, that the  
6 Cipollone deposition and trial testimony need only  
7 be listed if they do not contain notations or  
8 highlights.

9 Also, as Mrs. Walters has indicated,  
10 Dr. Pollay, by agreement between counsel, this  
11 request is limited to those materials that are  
12 within your possession or readily available to  
13 you. Do you understand that?

14 A. Yes.

15 Q. Do you have materials not produced to  
16 defendants that are responsive to this request?

17 A. No, I do not, but what is missing is my  
18 testimony in the Horton case, which I believe I  
19 will receive shortly, but was very slow in being  
20 produced, and as I mentioned before, my expert  
21 opinion in the RJR-MacDonald against Attorney  
22 General case was in my publications packages.

23 Q. Are you aware that Judge Chabot issued  
24 an opinion in the Canadian litigation?

25 A. Yes, I am.



1 Pollay - direct

2 Q. Have you seen the opinion?

3 A. No, I have not. It was authored in  
4 French.

5 Q. Do you know what the opinion was?

6 A. Yes, I do.

7 Q. And what was that?

8 A. I don't know the legal intricacies of  
9 it but he declared the ad ban in violation of the  
10 Canadian charter and suggested that it be held in  
11 force until an appeal process was completed.

12 Q. You testified on behalf of the  
13 government in that case. Is that right?

14 A. That's correct.

15 Q. Dr. Pollay, paragraph four of the  
16 production request asks for all documents cited in,  
17 relied upon in preparing and/or reviewed in  
18 connection with the preparation of the three  
19 reports that are enclosed with Mrs. Walters' March  
20 15th letter.

21 A. That's correct.

22 Q. Do you have any materials that you have  
23 not produced to defendants that would be responsive  
24 or that are responsive to this request?

25 A. No, I do not.

50780 4751

1 Pollay - direct

2 Q. And paragraph five asks for a  
3 publication, "Advertising practices of the American  
4 Tobacco Company" published in September 1930 in the  
5 National Better Business Bureau. I take it since  
6 you have not produced a copy of that, that you do  
7 not have one available. Is that correct?

8 A. That's correct.

9 Q. Dr. Pollay, is \$2,000 per day your  
10 usual and customary rate?

11 A. Yes, for depositions and trial work, yes.

12 Q. And do you have a different rate for  
13 other work that you do in conjunction with  
14 litigation?

15 A. On occasion, I have, yes.

16 Q. What is the rate that you currently  
17 charge for litigation work other than deposition  
18 and trial testimony?

19 A. I am now charging the \$2,000 rate.

20 Q. For everything?

21 A. Yes. That's the general rate.

22 Q. And does that equate to \$250 an hour?

23 A. Yes, when the days are limited to eight  
24 hours, yes.

25 Q. If you work less than eight hours a

50780 4752

1 Pollay - direct

2 day, do you charge \$2,000 or something less than  
3 that?

4 A. I charge something less than that.

5 Q. Do you charge your hourly rate in  
6 connection with travel relating to your consulting  
7 for litigation?

8 A. I usually charge travel at a 50 percent  
9 rate.

10 Q. When were you first contacted by  
11 Plaintiff's counsel about working on this case?

12 A. I don't recall, sometime in the spring.

13 Q. Was it before or after you received the  
14 first packet of materials?

15 A. I'm sure it was before.

16 Q. Did someone telephone you and ask you  
17 whether you were interested in working on the case?

18 A. Yes, my recollection is that I talked  
19 to Miss Walters.

20 Q. Did you agree at that time to be a  
21 witness or a consultant?

22 A. Yes, I agreed to review those documents  
23 and discuss the matter.

24 Q. Did you have additional conversations  
25 with Mrs. Walters relating to the preparation of

1 Pollay - direct

2 Exhibit 3, the March 15th letter?

3 A. No, I did not.

4 MS. WALTERS: Read back that question,  
5 please.

6 (Whereupon the record was read.)

7 Q. Have you met with Mrs. Walters to  
8 discuss this case since that first telephone call?

9 A. Only yesterday.

10 Q. Have you had conversations with her in  
11 the interim concerning this case?

12 A. I do not believe any substantive  
13 conversations have taken place. I think messages  
14 were received to advise me that there were  
15 additional documents in transit.

16 Q. How many hours have you spent working  
17 on this case so far outside of the deposition time  
18 today?

19 A. I'm not sure but it's been several days  
20 of work.

21 Q. Have you submitted any statements yet  
22 regarding your fees in this case?

23 A. No, I have not.

24 Q. Have you been paid anything for your  
25 work in this case?

1 Pollay - direct

2 A. No, I have not.

3 Q. At the present time, what is your  
4 calculation about how much fees you have incurred  
5 so far in this case?

6 A. I do not have such a calculation.

7 Q. Do you have an estimate?

8 A. To say it has been several days work,  
9 perhaps roughly a week in total.

10 Q. Are you currently working on any other  
11 cigarette litigation?

12 A. No, I'm not.

13 Q. You have been retained as an expert  
14 witness in other cigarette cases. Is that correct?

15 A. Yes, I have.

16 Q. And you have testified in some?

17 A. That's correct, two others.

18 Q. Which cases are we talking about?

19 A. Horton versus American Tobacco in  
20 Oxford, Mississippi, and RJR-MacDonald versus the  
21 Attorney General of Montreal, Canada.

22 Q. And of course, the Cipollone case?

23 A. That's right.

24 Q. Do you know whether you have been  
25 listed as an expert witness in any other cigarette

1 Pollay - direct

2 litigation?

3 A. I may have because the people who tried  
4 the Horton case asked me about a second case but I  
5 have seen no documents nor done any work with  
6 respect to that case to date.

7 Q. Do you know what the name of that case is?

8 A. No, I don't recall.

9 Q. Have you agreed to work on that case?

10 A. I have agreed in principle.

11 Q. Have you agreed in principle to consult  
12 or to testify?

13 A. I haven't been asked to testify so I  
14 guess I agreed to only consult. I haven't seen the  
15 documents nor have done any work on that case.

16 Q. Did you do any work on the Cipollone  
17 case after December 1, 1990?

18 A. No.

19 Q. How much were you paid for your work on  
20 the Canadian ad ban case?

21 A. I don't know.

22 Q. Why don't you know?

23 A. Because the amounts were received in  
24 different checks at different points in time.

25 Q. Did you prepare and send statements

1 Pollay - direct

2 regarding your fees and expenses in that case?

3 A. Yes, I would have done that on several  
4 different occasions.

5 Q. On how many occasions?

6 A. The litigation spanned and preparatory  
7 efforts spanned more than a year so probably a half  
8 dozen different -- I don't recall, but it would be  
9 numerous occasions.

10 Q. What was the amount of these bills  
11 individually, do you remember?

12 A. No, I don't.

13 Q. Do you recall whether the amount of  
14 money that you were paid for the Canadian case  
15 exceeded or was less than \$100,000 in total?

16 A. I'm sure it was less.

17 Q. How much money were you paid for your  
18 testimony and work on the Cipollone case?

19 A. I don't recall but I do remember being  
20 challenged that I was paid \$60,000 or something  
21 like that in that trial.

22 Q. Were you paid any money by Plaintiff's  
23 counsel after trial?

24 A. No. I mean there was no work after  
25 trial except to maybe clear the account. I don't

1 Pollay - direct

2 remember when the checks were issued but it would  
3 have been an amount owing for the testimony itself.

4 Q. And was that received by you after  
5 trial?

6 A. I believe so. The account was cleared.

7 Q. You indicate that the account was  
8 cleared. Do you monitor the accounts or the status  
9 of the accounts?

10 A. I do keep a copy of each invoice that  
11 goes out and wait for notification that a check has  
12 been received that matches that.

13 Q. And who do you receive that  
14 notification from?

15 A. From the accounts clerk at the Faculty  
16 of Commerce at UBC, although occasionally the  
17 checks would be mailed directly to me.

18 MR. ALLINDER: Dr. Pollay, this is a  
19 convenient breaking point for me. I think this  
20 would be a good time to take lunch, although it's a  
21 little bit before 1 o'clock.

22 MS. WALTERS: He would rather go a  
23 little later.

24 MR. ALLINDER: You want to go beyond one?

25 MS. WALTERS: I think that's the



1 Pollay - direct  
2 witness's preference.

3 MR. ALLINDER: Let's do that.

4 Q. Dr. Pollay, if you would, please, look  
5 at Exhibit 3, which was the March 15th letter.  
6 There are, as I understand it, a number of areas of  
7 testimony indicated in this letter that are similar  
8 to areas of your testimony for the Cipollone case.  
9 Is that correct?

10 A. That's correct.

11 Q. I'm going to try to go through with you  
12 and identify what those are, if we can. The three  
13 expert reports that are enclosed, "Themes and  
14 tactics," "Chronological notes," "Propaganda,  
15 puffing," were also expert reports in the Cipollone  
16 case. Is that correct?

17 A. The propaganda and puffing was not  
18 available at the time of the first Cipollone trial  
19 but was produced and discussed at the last  
20 production deposition.

21 Q. And on page two, the second complete  
22 paragraph, the numerous marketing and consumer  
23 research techniques available to cigarette  
24 manufacturers, that was also a topic of your expert  
25 opinion in Cipollone. Is that correct?

1 Pollay - direct

2 A. Yes.

3 Q. As was in the following paragraph, the  
4 extent and magnitude of cigarette advertising?

5 A. Yes.

6 Q. And in the following paragraph, changes  
7 in cigarette themes that corresponded to  
8 governmental action, legislation, regulation,  
9 governmental reports and news stories pertinent to  
10 cigarette smoking and health as well as marketing  
11 and advertising decisions made by cigarette firms,  
12 was that also a topic of your expert opinion in  
13 Cipollone?

14 A. Yes.

15 Q. The following paragraph, nature of the  
16 information environment created by cigarette  
17 advertising, was that also a topic of your expert  
18 opinion in Cipollone?

19 A. I believe so.

20 Q. And on the following page, the first  
21 complete paragraph, the nature of cigarette  
22 advertising from the late 1930's to the early  
23 1980's, was that also a topic of your expert  
24 opinion in Cipollone?

25 A. Yes.

1 Pollay - direct

2 Q. And in the next to the last paragraph,  
3 the general effects of cigarette advertising on  
4 consumers generally, which appears in the next to  
5 last line, that was also a topic of your expert  
6 opinion in the Cipollone. Is that correct?

7 A. I believe so.

8 Q. Do you adopt in this case your  
9 Cipollone testimony and opinions regarding these  
10 subjects?

11 A. Yes. I mean if you mean do I now  
12 repudiate anything I testified to then, I do not.

13 Q. Are your opinions regarding any of  
14 these subjects different, now different from the  
15 opinions you expressed in Cipollone?

16 A. I can't recall, of course, the full  
17 detail, all the opinions expressed in Cipollone.  
18 In general, the opinions are similar. They may be  
19 more refined as I have gained additional  
20 sophistication through additional exposure.

21 Q. Do you know which of your opinions may  
22 have changed as a result of the refinement process?

23 A. I know my bottom line opinion about the  
24 advisability of an ad ban has changed.

25 Q. And how has that changed?

1 Pollay - direct

2 My question is does general effects mean impact?

3 A. I'm not sure what you mean by "impact"  
4 but I would, I think, answer yes in that it's  
5 concerned with how cigarette advertising is  
6 perceived and judged by consumers.

7 Q. And also does it mean how it affects  
8 consumer behavior?

9 A. Yes.

10 Q. In the same paragraph in the first  
11 sentence, it indicates that you will testify about  
12 Mr. Rossi's use of cigarettes, including the dates  
13 and circumstances of his initiation of use of  
14 cigarettes, the brands he smoked and the dates of  
15 use of those brands. Do you see that?

16 A. Yes, I do.

17 Q. What is the date of Mr. Rossi's  
18 initiation of the use of cigarettes?

19 A. He is reported to have been sampling  
20 cigarettes around 1942, when he was 15 years old,  
21 and apparently becomes a regular smoker about 1945,  
22 when he joins the Navy.

23 Q. What were the circumstances of his  
24 initiation to the use of cigarettes?

25 A. His involvement in the military. He

1 Pollay - direct

2 joined the Navy and left a family home and was on a  
3 military base.

4 Q. Perhaps you misunderstood me. The  
5 question is what were the circumstances of his  
6 initiation of the use of cigarettes? You had  
7 indicated that he had started sampling cigarettes  
8 in 1942.

9 A. Your concern is with the sampling  
10 behavior, not with his regular use?

11 Q. You had indicated that his initiation  
12 was in 1942. Did I misunderstand you?

13 A. I think I stated it that he had sampled  
14 beginning in 1942 and becomes a regular smoker, by  
15 all estimates, when he joins the Navy.

16 Q. What were the brands he smoked and the  
17 dates of his use of those brands?

18 MS. WALTERS: His whole life?

19 MR. ALLINDER: Yes, as it appears in  
20 this expert report.

21 A. He smoked Chesterfields as his first  
22 regular brand from 1945, continued to smoke that as  
23 his regular brand until he switches to Kent and my  
24 opinion is that the best estimate for his switch to  
25 Kent is about 1958. He smokes that brand until the

1 Pollay - direct

2 mid-sixties, I believe 1966, when he switches again  
3 to True, and then later on, in the seventies until  
4 his death, he picks up some Vantage and then Merit,  
5 as well.

6 Q. What do you mean when you say, "picks  
7 up"?

8 A. He doesn't totally abandon his smoking  
9 of True; that is, he begins to smoke multiple  
10 brands, substituting them on different occasions.

11 Q. Is how much Peter Rossi smoked at any  
12 particular time, the quantity, important or  
13 relevant to your opinions in this case?

14 A. Not the variation of that. I know him  
15 to be what the industry would class as a heavy  
16 smoker essentially throughout his smoking history.

17 Q. Is the fact that you consider him to be  
18 a heavy smoker important to your opinions in this  
19 case?

20 A. Yes.

21 Q. In what way?

22 A. Because it manifests his dependence  
23 upon nicotine.

24 Q. Do you have an opinion in this case  
25 regarding whether Peter Rossi was dependent on

1 Pollay - direct

2 nicotine?

3 A. Yes, I do.

4 Q. Did the amount that Peter Rossi smoked  
5 change over time?

6 A. I believe it did increase as he shifted  
7 to products that delivered less tar and nicotine,  
8 that the number of cigarettes he smoked would from  
9 time to time increase.

10 Q. When was it that he switched to the  
11 lower tar and nicotine cigarettes?

12 A. He switches from Chesterfields to Kent  
13 in 1958, by my estimate, and to True in 1966.

14 Q. Did his increased consumption  
15 correspond to a switch in brand, in your opinion?

16 A. Yes, I believe so.

17 Q. And how much, how many cigarettes was  
18 he smoking per day in 1957, do you know?

19 A. I don't recall exactly but I believe  
20 the estimates were two or more packs a day.

21 Q. And in 1958, after he switched to Kent,  
22 how many cigarettes was he smoking per day?

23 A. I believe he was smoking about the same  
24 amount but I don't recall specifically.

25 Q. Did his daily consumption of cigarettes

1 Pollay - direct

2 increase between 1958 and 1966?

3 A. Not that I recall.

4 Q. And did it increase between 1966 and  
5 1974?

6 A. I do believe he was smoking more in the  
7 seventies than he had been earlier.

8 Q. Dr. Pollay, what is your definition of  
9 the term "information environment"?

10 A. I believe this has been covered  
11 before. It would include many information sources,  
12 that is, things in newspapers, things in magazines,  
13 ads as well as editorial material, television and  
14 radio news coverage, again, ads as well as  
15 editorial material there.

16 Q. Are the sources of information you have  
17 just identified also called components of the  
18 information environment?

19 A. They may well be. It seems to be a  
20 fair description.

21 Q. Is the information environment  
22 comprised essentially of all of the sources of  
23 information regarding a particular subject?

24 A. Yes, although often the focus is on the  
25 institutional sources, that is, the news,



1 Pollay - direct  
2 newspapers and broadcast media as opposed to the  
3 interpersonal sources, the things that would be  
4 relayed by word of mouth.

5 Q. Does an individual's information  
6 environment include the information he or she would  
7 receive from interpersonal sources?

8 A. Yes, although typically, that's an echo  
9 of what has been acquired through the institutional  
10 sources.

11 Q. Are there different information  
12 environments for different subjects?

13 A. The environment is generally the same  
14 but different individuals might select and attend  
15 to different media, that is, watch, have different  
16 viewing patterns of watching television or radio.

17 Q. My question is are there information  
18 environments regarding different subjects; for  
19 example, is there an information environment on  
20 cigarette smoking and health and is there an  
21 information environment on safety in the New York  
22 City subways and is there an information  
23 environment on any other subject?

24 A. It's probably reasonable to describe it  
25 that way. It could also be ascribed there is one

1 Pollay - direct

2 information environment, elements of which are  
3 relevant to, say, smoking and health and other  
4 elements of which are relevant to, say, subway  
5 safety and transportation issues.

6 Q. When you use the term "information  
7 environment," are you talking about the information  
8 environment relating to cigarette smoking and  
9 health?

10 A. Yes, and the larger context, too, of  
11 what else is going on in the news in addition to  
12 that.

13 Q. The information or the portion of the  
14 information environment that relates to smoking and  
15 health is comprised of which sources of  
16 information?

17 A. It's comprised -- as I defined, it's  
18 comprised primarily of the institutional sources of  
19 information, that is, that which is available  
20 through the broadcast and print media and then  
21 there would be supplemental forms of advertising,  
22 for example, things like billboards and retail  
23 point of sale signage and less formal media.

24 Q. Does the information environment  
25 regarding smoking and health include information

1 Pollay - direct

2 that is received from other sources, such as family  
3 members?

4 A. Yes, the information environment for an  
5 individual would include all of the information  
6 surrounding that individual, including that from  
7 interpersonal sources. As I say, that's often  
8 echoed and emphasizing what has been learned from  
9 the larger world.

10 Q. So it is comprised, as I understand it,  
11 essentially of all the sources of information that  
12 is available to an individual?

13 A. Yes, but as I say, as it's typically  
14 used, it gives emphasis to the institutional  
15 sources.

16 Q. Can personal observation or personal  
17 experience be an element of the information  
18 environment?

19 A. The environment is what the environment  
20 is. The individual then is exposed to or attends  
21 to various elements of that environment.

22 Q. Is advertising, in your opinion, a  
23 source of information regarding cigarette smoking  
24 and health?

25 A. Yes.

1 Pollay - direct

2 Q. Which components or parts of the  
3 information environment do you have opinions about  
4 for this case?

5 A. I have opinions about the advertising,  
6 the press coverage of the smoking and health issue,  
7 the general news coverage, that is, the context in  
8 which all of these reports and advertising were  
9 taking place, that is, the historical situation,  
10 setting.

11 Q. Are there any parts of the information  
12 environment regarding cigarette smoking and health  
13 that you do not have opinions about?

14 A. There no doubt may be -- it's  
15 conceivable that there are things that he was  
16 exposed to that I'm not aware of that of course,  
17 it's impossible for me to have opinions about. But  
18 I have opinions about what was generally available  
19 to the general public.

20 Q. Do you have opinions about the  
21 information that was available to Peter Rossi from  
22 interpersonal sources?

23 A. Only as would be reflected through the  
24 depositions.

25 Q. Do you have opinions in this case

1 Pollay - direct

2 regarding the credibility of the sources of  
3 information within the information environment?

4 A. Yes.

5 Q. Does an assessment of the information  
6 environment include or exclude consideration of a  
7 person's education, intelligence and ability to  
8 process information?

9 A. Typically, it would exclude it. That  
10 is, the environment would be described in general  
11 terms and then how an individual might make sense  
12 out of that environment might then depend upon the  
13 individual characteristics but the environment  
14 might well be conceived of as the same for all  
15 members of the public.

16 Q. Would two people who were exposed to  
17 the same information then have the same information  
18 environment?

19 A. The environment would be the same.

20 Q. Even if the two people differed in  
21 terms of age or education or ethnic background or  
22 in any other way?

23 A. That's correct, the environment in  
24 which they are functioning would be the same.

25 Q. On page three of the March 15th letter,

1 Pollay - direct

2 A. As I conceive of the environment, it's  
3 generally the same and then how individuals  
4 perceive and attend to it may differ depending upon  
5 their individual habits. But as normally  
6 conceived, the environment is something that is  
7 shared, just like the physical environment is  
8 something we all share.

9 Q. Are different individuals exposed to  
10 different sources of information?

11 A. Yes.

12 Q. Are individuals exposed to different  
13 information?

14 A. Yes.

15 Q. Individuals who are exposed to  
16 different sources of information and different  
17 information, do they have different information  
18 environments?

19 A. They are attending to different  
20 elements in the larger environment. So I mean we  
21 do not all read all newspapers. Our particular  
22 habits will influence what it is we are exposed to.

23 Q. Is it your opinion that individuals do  
24 not have unique information environments?

25 A. Again, the way I use the term

1 Pollay - direct

2 "environment" is to refer to the general condition  
3 that all people are generally -- can be assumed to  
4 be exposed to and then that can be refined with  
5 additional knowledge about the specific behaviors  
6 of individuals.

7 Q. Does the information environment ever  
8 change?

9 A. The information environment evolves  
10 over time, yes, sometimes very rapidly. News can  
11 break quickly.

12 Q. How do you determine what the  
13 information environment is for a particular  
14 individual at a particular time?

15 A. Again, you are trying to force me to  
16 use the term "information environment" in a way I  
17 don't think is valid. One typically determines the  
18 information environment that exists for the general  
19 public and then that can be refined with additional  
20 information about what an individual is likely to  
21 have seen or not seen.

22 Q. How do you determine what the  
23 information environment is for a particular time?

24 A. By review of the advertising and news  
25 of that era.

1 Pollay - direct

2 Q. Can you quantify the significance, the  
3 comparable significance of the various components  
4 of the information environment?

5 A. It can certainly be quantified in terms  
6 of how much space is given over to the various  
7 component elements.

8 Q. Is there a different way to quantify  
9 the significance of the various components?

10 A. Yes. Alternatively, one can count the  
11 number of items. The typical way in which  
12 advertising is assessed is by counting the number  
13 of exposures.

14 Q. On page two of the March 15th letter,  
15 the next to the last complete paragraph, it says  
16 that you are expected to testify about the nature  
17 of the information environment created by cigarette  
18 advertising. Does that mean anything more than  
19 that you have opinions regarding the advertising  
20 component or aspect of the information environment?

21 A. Does that one line mean more than  
22 that?

23 Q. Yes.

24 A. I doubt it. That's referring to how  
25 informative cigarette advertising is or is not at



1 Pollay - direct

2 various points in time.

3 Q. You had indicated earlier, I believe,  
4 that portions of the information environment had  
5 been influenced by advertising. Is that correct?

6 A. I do not believe that is a correct  
7 paraphrase of what I said.

8 Q. Are there elements of the information  
9 environment that have been created by advertising?

10 A. Advertising is an element of the  
11 information environment.

12 Q. Has it created other elements?

13 A. It influences other elements.

14 Q. Which other elements does it influence?

15 A. The nature of news coverage by  
16 magazines and newspapers.

17 Q. Any others?

18 A. All news media, so it would include  
19 broadcast journalism as well as print journalism.

20 Q. Are there any other elements of  
21 information environment that are influenced by  
22 advertising?

23 A. You seemed intent before to include  
24 interpersonal sources and of course, interpersonal  
25 sources are learning from the advertising, as well,

1 Pollay - direct

2 so that they would be influenced by advertising.

3 Q. How is it that the nature of the  
4 broadcast media is influenced by advertising?

5 A. The quality, extent and sometimes even  
6 if stories are covered can be influenced by the  
7 extent to which the editors may fear that  
8 advertising revenues are placed in jeopardy.

9 Q. Is it your opinion that the editorial  
10 decisions of newspapers are influenced by a fear of  
11 retaliation by advertisers in that publication?

12 A. Often, yes.

13 Q. Is there any other way in which  
14 advertising influences the nature of broadcast  
15 media?

16 A. Of broadcast media? It influences the  
17 programming, that is, the entertainment components  
18 as well as the news components are shaped by the  
19 advertiser's interests.

20 Q. Is there any other way in which  
21 advertising influences the nature of the news  
22 media?

23 A. It depends what you mean by  
24 advertising. If you mean paid for space like that,  
25 I think we probably covered the major dimensions.

1 Pollay - direct

2 If you include the functions of public relations,  
3 of course, there may be stories that are carried by  
4 the news media on an unpaid basis that serve the  
5 interests of the advertiser.

6 Q. Do you include public relations as an  
7 aspect of advertising?

8 A. Yes, I consider them both component  
9 parts of the promotional mix.

10 Q. How does public relations and  
11 advertising influence the nature of the news media?

12 A. I think this is now redundant with  
13 areas we covered but it would include the  
14 publishing of stories on an unpaid basis that are  
15 provided by the public relations firms; the  
16 treatment of stories in light of potential  
17 advertising revenues that may be placed in  
18 jeopardy; advertisers will also influence  
19 entertainment content as well as news content.

20 Q. How does advertising influence the  
21 nature of interpersonal sources of information  
22 within the information environment?

23 A. Advertising shapes people's perceptions  
24 and attitudes and judgments about, say in this  
25 case, smoking and cigarettes and so that when

1 Pollay - direct

2 people come to communicate with one another about  
3 that topic, that's influenced by the advertising  
4 they have all seen.

5 Q. Does advertising shape or echo our way  
6 of life?

7 A. Both.

8 Q. At different times or at the same time?

9 A. At the same time. It's a selective  
10 reinforcer of certain behaviors and attitudes.

11 MR. ALLINDER: Is this a convenient  
12 time for a lunch break?

13 MS. WALTERS: Doctor?

14 THE WITNESS: We still have another 20  
15 minutes or so we can go.

16 MR. ALLINDER: You want to go up until  
17 2 o'clock?

18 THE WITNESS: We might as well.

19 MS. WALTERS: A quarter of?

20 MR. ALLINDER: I'm sorry?

21 MS. WALTERS: We can't get lunch here  
22 after two.

23 MR. CRIST: I'm sorry, what is that?

24 MS. WALTERS: A quarter of two.

25 MR. CRIST: For some of us that get up

1 Pollay - direct  
2 before 7 o'clock --

3 MS. WALTERS: There is an apple here if  
4 anyone wants to dare.

5 MR. CRIST: It has an exhibit tag. Why  
6 don't we break in 15 minutes, if that's okay.

7 MR. ALLINDER: Break in 15 minutes?

8 MR. CRIST: Yes, that's fine.

9 MR. ALLINDER: That's fine.

10

11 BY MR. ALLINDER:

12 Q. What was Peter Rossi's information  
13 environment during the years 1942 to 1944?

14 A. '42 to '44, he was living as a teenager  
15 in Brooklyn and would have been exposed to  
16 newspapers like the Daily News, radio programs, the  
17 local radio stations, primary institutional  
18 sources.

19 Q. Which newspapers and magazines was he  
20 reading at this time?

21 A. It's my recollection that he was  
22 reading the Daily News.

23 Q. How often did he read it?

24 A. I don't recall. A newspaper like that,  
25 of course, is widely distributed on the streets so

1 Pollay - direct

2 he would see headlines and often in those days  
3 would have heard headlines shouted by news  
4 vendors. He would also have been exposed, of  
5 course, to all the other things on the street, that  
6 is, the various advertising visible.

7 Q. Do you know what radio programs he  
8 listened to?

9 A. No, I do not have detailed information  
10 on that but I know him to be a sports fan so it's  
11 likely he listened to ball games. The Dodgers in  
12 those days were still in Brooklyn so it's likely  
13 that he listened to the Brooklyn Dodger broadcasts.

14 Q. Do you know during the years 1942 to  
15 1944, how Peter Rossi read a newspaper? Did he  
16 read it from cover to cover, for example, or do you  
17 think that he glanced through it?

18 A. I don't know for certain but my best  
19 guess, knowing other adolescent newspaper reading  
20 behavior, is that he would glance through it.

21 Q. Were there any other sources of  
22 information to Peter Rossi regarding cigarette  
23 smoking and health in 1942 to 1944 that you have  
24 not identified?

25 A. Those are the primary institutional

1 Pollay - direct  
2 sources that I can think of.

3 Q. Were there any other sources,  
4 institutional or not, of information regarding  
5 smoking and health to Peter Rossi in 1942 to 1944?

6 A. Certainly with regard to smoking, there  
7 would be some interpersonal influences, friends and  
8 classmates, schoolmates and the like.

9 Q. What information was Peter Rossi  
10 receiving from interpersonal sources regarding  
11 smoking and health in 1942 to 1944?

12 A. I suppose that the teenagers of the  
13 day, having seen all of the advertising glamorizing  
14 the product, would have collectively judged smoking  
15 to be an attractive behavior of the modern American  
16 and would have been applauding of that in the sense  
17 of seeing that as a passage to adulthood.

18 Q. Is there any other information  
19 regarding smoking and health that he would have  
20 been receiving from interpersonal sources during  
21 this time, during these years?

22 A. Not that I recall.

23 Q. What information regarding cigarette  
24 smoking and health was Peter Rossi receiving in the  
25 years 1944 to 1944 from institutional sources?

1 Pollay - direct

2 A. As I mentioned, he would have seen lots  
3 of advertising for cigarettes and I think that  
4 would probably be primarily it. There was some  
5 initiative by the Federal Trade Commission against  
6 some of those advertisers but that was not a very  
7 well covered fact and there was no results from  
8 that until much later. It was more unlikely than  
9 not that he would have known about that.

10 Q. Dr. Pollay, just to make sure that I  
11 understand, and hopefully to ease the communication  
12 in the questioning, are there two major components  
13 of an information environment, as the way you used  
14 these terms, interpersonal and institutional?

15 A. No, the way I used the term, the  
16 institutional framework, that is, the advertising,  
17 news sources and those things that are public and  
18 distributed at large constitute the primary  
19 information environment. One could talk about the  
20 interpersonal communications as sort of a secondary  
21 information environment and as normally conceived,  
22 it tends to echo and emphasize those things learned  
23 from the primary information environment.

24 Q. But as you used these terms, all  
25 sources of information fit either within



1 Pollay - direct

2 interpersonal or institutional. Is that correct?

3 A. I believe so. There may well be some  
4 gray areas, like a testimonial ad, how personal or  
5 impersonal that is may be debated.

6 Q. Was Peter Rossi receiving any  
7 information during the years 1942 to 1944 that  
8 there were health risks associated with smoking?

9 A. Not that I recall. There certainly  
10 wouldn't have been the kind of school education  
11 about it as there is these days.

12 Q. Do you know whether his friends smoked?

13 A. It's almost certain that some of his  
14 friends did. In those days, he was friends with  
15 older boys and the vast majority of older boys  
16 would likely have been smoking at least on  
17 occasion.

18 Q. Did members of his family smoke?

19 A. His father smoked a cigar.

20 Q. Do you know what information Peter  
21 Rossi was aware of in the years 1942 to 1944  
22 regarding the health risks of smoking?

23 A. It would be my assumption that he would  
24 have been aware of relatively little information,  
25 since there was relatively little information

1 Pollay - direct  
2 around in the general environment.

3 Q. What information do you think that he  
4 would have been aware of?

5 A. He might have heard some reference to  
6 cigarettes as being cancer sticks or coffin nails,  
7 as I certainly did when I was a child in roughly  
8 the same era, but that was generally dismissed as  
9 old wives' tales or an old-fashioned idea because  
10 it was not reinforced by any authority.

11 Q. How old were you, Dr. Pollay, in 1942?

12 A. I was two years old in 1942.

13 Q. Was the message that Peter Rossi was  
14 receiving from the information environment  
15 regarding cigarette smoking and health during the  
16 years 1942 to 1944 different in any respect from  
17 his awareness regarding cigarette smoking and  
18 health during the same time period?

19 MS. WALTERS: Could you read that  
20 question back, please.

21 (Whereupon the record was read.)

22 A. It's my judgment that his awareness at  
23 that time would have been shaped predominantly by  
24 his exposure to advertising, that he would have  
25 unlikely have had much supplemental information to

1 Pollay - direct  
2 that.

3 Q. What was the information environment  
4 regarding cigarette smoking and health in 1942 to  
5 1944?

6 A. If you dug deeply enough, there were  
7 some studies being reported in fairly obscure  
8 medical journals that were suggesting already the  
9 linkage to cancer.

10 Q. In your opinion, was Peter Rossi's  
11 awareness of a health risk of smoking any different  
12 than the awareness of the general public, again,  
13 during the same time period?

14 A. No, I think his awareness in that time  
15 period would have been quite similar to that of the  
16 general public. He was, after all, a teenager and  
17 busy with many things in his life.

18 Q. What was the message that advertising  
19 was contributing to the information environment  
20 during the years 1942 to 1944 regarding the health  
21 risks of smoking?

22 A. There were, judging by the Federal  
23 Trade Commission's actions and judgments, there  
24 were a lot of campaigns that were suggesting that  
25 smoking was a healthy thing to do; there were other

1 Pollay - direct  
2 campaigns suggesting that it was also a patriotic  
3 thing to do, that the heroes of the nation were all  
4 smokers themselves.

5 Q. Was the information environment  
6 regarding smoking and health in 1942 to 1944 any  
7 different than the information concerning smoking  
8 and health that was available from advertising  
9 during the same time period?

10 A. Yes. As I mentioned, if you dug deeply  
11 enough, there were some obscure medical reports in  
12 the information environment that were suggesting  
13 that cigarettes were cancer causing but in terms of  
14 what the public was likely to have been confronted  
15 with and generally aware of, it would have been  
16 primarily advertising that shaped their opinions  
17 and attitudes.

18 Q. Do you know what Peter Rossi believed  
19 about the health risk of smoking during the years  
20 1942 to 1944?

21 A. I assume him to believe that this was a  
22 glamorous, an adult, an American thing to  
23 participate in and that it would not constitute a  
24 major health risk for him.

25 Q. You used the term "assume" in your

1 Pollay - direct

2 answer. Does that mean that you do not have an  
3 opinion in this case regarding what Peter Rossi  
4 believed about the health risk of smoking during  
5 the years 1942 to 1944?

6 A. No, I think I have expressed my  
7 opinion.

8 Q. Is it an assumption or is that your  
9 opinion?

10 A. I think it more likely than not that he  
11 would have perceived cigarettes in the way I  
12 described.

13 MS. WALTERS: Mr. Allinder, you advised  
14 the witness early on that all of the opinions that  
15 he has given in this case and in this testimony  
16 today are to a reasonable degree of probability.  
17 So I assume the witness has already been instructed  
18 in that regard.

19 MR. ALLINDER: I also asked him that if  
20 he was going to deviate from that standard at any  
21 time, please so indicate. That's why I asked him  
22 to clarify the use of the term "assumed" in that  
23 last answer.

24 Q. Do you have an opinion about whether  
25 Peter Rossi was adequately informed about the

1 Pollay - direct

2 health risk of smoking during the years 1942 to  
3 1944?

4 A. Yes, I do.

5 Q. And what is your opinion?

6 A. That he was not adequately informed.

7 Q. What is the basis of your opinion?

8 A. My judgment about the character of the  
9 advertising in those days and the health assurances  
10 that they provided.

11 Q. Do you know what the state of  
12 scientific and medical knowledge regarding health  
13 risk of smoking was during the years 1942 to 1944?

14 A. To some extent, yes.

15 Q. What was that?

16 A. There were already studies published in  
17 the medical journals going back to at least 1938  
18 and perhaps even preceding that that indicated that  
19 there was a serious medical problem.

20 Q. Do you have expert opinions in this  
21 case regarding the state of the art?

22 A. No, I do not judge the state of the art  
23 of medical knowledge.

24 Q. Do you rely upon opinions of others  
25 regarding the state of the art?

1 Pollay - direct

2 A. No, I judge the cigarette advertising  
3 to be offering health reassurances, which we can  
4 identify in retrospect as being unwarranted.

5 Q. What information would Peter Rossi have  
6 had to have known during the years 1942 to 1944 to  
7 have been adequately informed about the health risk  
8 of smoking?

9 A. Whatever information there might have  
10 been in the medical community about the risks and  
11 to be spared the unwarranted reassurances.

12 Q. What information was known in the  
13 medical community during the years 1942 to 1944  
14 about the health risk of smoking?

15 MS. WALTERS: This witness is not being  
16 offered as a state of the art expert. He only said  
17 he has a general background, he doesn't have  
18 expertise as a state of the art expert on medical  
19 risk. So I don't think he can answer that  
20 question.

21 Q. Dr. Pollay, you have an opinion in this  
22 case regarding whether or not Peter Rossi was  
23 adequately informed of the health risk of smoking.  
24 Is that correct?

25 A. Yes.

1 Pollay - direct

2 Q. And as a basis of your opinion, to be  
3 adequately informed, Peter Rossi would have had to  
4 have known what was known in the medical community  
5 at the same time. Is that correct?

6 A. That's correct. He should know at  
7 least the bottom line, that is, the general  
8 conclusions.

9 Q. And is it your opinion that Peter Rossi  
10 did not know what was known in the medical  
11 community at that time?

12 A. Yes, it is.

13 Q. And what was known in the medical  
14 community that Peter Rossi didn't know during the  
15 years 1942 to 1944?

16 MS. WALTERS: I'm going to let the  
17 witness answer. I think he has already answered in  
18 terms of his general knowledge and his general  
19 background about what was known. Again, he is not  
20 a state of the art expert. We have other experts  
21 who have analyzed in detail what was known at  
22 specific points in time and what should have been  
23 known by the tobacco industry and what should have  
24 been conveyed in detail. But given those  
25 parameters, the fact that he is not a state of the



1 Pollay - direct

2 art expert and understanding there is some overlap,  
3 he can answer generally. I think he already has.  
4 Is there anything you can add to your earlier  
5 answer?

6 THE WITNESS: No. Just the general  
7 point is that the public might have known but were  
8 not apprised of the fact that there were medical  
9 studies in the medical journals implicating  
10 cigarettes with some serious medical risks,  
11 including cancer.

12 Q. Any other medical risks, to your  
13 knowledge?

14 A. I'm sure there were others but that's  
15 the one that sticks out in my mind.

16 MR. ALLINDER: Doctor, it is a quarter  
17 till two. At your request, I think this is a good  
18 time to adjourn for a lunch break.

19 (Whereupon the luncheon recess was  
20 taken.)

21

22

23

24

25

1 Pollay - direct

2 BY MR. ALLINDER:

3 Q. Dr. Pollay, did you review any  
4 materials over the lunch break?

5 A. No, I did not.

6 Q. Again, during the years 1942 to 1944  
7 that we were discussing before, did Peter Rossi  
8 have any concerns about the health risk of smoking?

9 A. Not that I know of.

10 Q. What effect did Peter Rossi's  
11 information environment have on him during the  
12 years 1942 to '44 with respect to his cigarette  
13 smoking?

14 A. It shaped his perceptions and attitudes  
15 toward smoking in general and various brands in  
16 specific.

17 Q. And in what way? How did it shape his  
18 perceptions and attitudes?

19 A. Through the exposure to advertising  
20 primarily.

21 Q. What were the perceptions regarding  
22 cigarette smoking that he formed as a result of his  
23 exposure to cigarette advertising?

24 A. I think this is redundant with the line  
25 of questions this morning but that it was perceived

1 Pollay - direct  
2 as a glamorous and adult thing to do and during the  
3 war years, it was also positioned as a patriotic  
4 activity, something that the soldiers of the nation  
5 were engaged in who were somewhat older than he  
6 was.

7 Q. Does the information environment affect  
8 all people in the same way?

9 A. Again, I think this is repetitive with  
10 the line of questions this morning. The  
11 environment is generally the same for all people  
12 but different individual circumstances might change  
13 the way they attend to the information environment.

14 Q. Did people who had the same information  
15 environment as Peter Rossi had from 1942 to 1944  
16 choose not to begin smoking?

17 A. Did some people?

18 Q. Did any people who had the same  
19 information environment as Peter Rossi had in 1942  
20 to 1944 choose not to begin smoking?

21 A. It's certainly a matter of fact that  
22 some people exposed to that environment did not  
23 take up the habit of smoking.

24 Q. Do you have an opinion about why Peter  
25 Rossi began smoking?

1 Pollay - direct

2 A. Yes, I do.

3 Q. And what is that opinion?

4 A. That he believed it was consistent with  
5 becoming an adult in America and becoming a member  
6 of the military.

7 Q. During the years 1942 to 1944, was  
8 Peter Rossi reading advertisements for other  
9 consumer products?

10 A. He would have been exposed. Reading is  
11 not always the most accurate word for the character  
12 of advertising exposure but he would have been  
13 exposed to cigarette -- ads for other products as  
14 well as cigarettes.

15 Q. Did Peter Rossi pay any more or any  
16 less attention to advertising than the average  
17 consumer did?

18 A. The average consumer?

19 Q. Yes.

20 A. No reason to believe he paid any more  
21 or less attention than the average consumer.

22 Q. How credible were cigarette  
23 advertisements to Peter Rossi in the years 1942 to  
24 1944?

25 A. I would say they were quite credible.

1 Pollay - direct

2 Most of those in those days were presented in a  
3 very authoritative tone and people in those days  
4 generally presumed that they were adequately  
5 protected by government regulation that ads were to  
6 be believed.

7 Q. Have you done an advertising  
8 effectiveness study on Peter Rossi?

9 A. I don't even know what you mean by  
10 that.

11 Q. Was it your testimony in Cipollone that  
12 you had done an advertising effectiveness study on  
13 Nathan Horton and on Rose Cipollone?

14 MS. WALTERS: If you are referring to  
15 something, Mr. Allinder, I would appreciate if you  
16 would show it to the witness. He hasn't reviewed  
17 his depositions or trial testimony and I don't  
18 think it's fair for him to read over all the  
19 testimony and the various materials. Is there  
20 something particular that you are referring to?

21 MR. ALLINDER: Yes.

22 Q. Are you familiar with the term  
23 "advertisement" or "advertising effectiveness  
24 study"?

25 A. I don't understand it in the context

1 Pollay - direct

2 you used it.

3 Q. Was Peter Rossi more or less likely  
4 than the average consumer to believe claims made by  
5 advertisers?

6 A. I think he is just as likely as the  
7 average consumer to believe claims of advertisers.

8 Q. What is the basis of your opinion?

9 A. I think the converse is the more  
10 appropriate query, that is, is there any basis for  
11 believing otherwise.

12 Q. Does the average consumer believe  
13 advertising claims?

14 MS. WALTERS: Now or in 1942?

15 MR. ALLINDER: Still in 1942 to 1944.

16 A. Yes, the average consumer believes that  
17 the processes of regulation are such to keep  
18 dishonest advertising claims from being published.

19 Q. During the years 1942 to 1944, was the  
20 average person aware of the advertiser's intent?

21 A. They would certainly be aware of the  
22 distinction between advertising and  
23 nonadvertising. Advertising had commercial intent.

24 Q. What does the concept advertising  
25 clutter mean?

1 Pollay - direct

2 A. It refers to the competitiveness  
3 between a variety of advertisers each trying to get  
4 the attention of consumers.

5 Q. During the years 1942 to 1944, do you  
6 know how many advertisements the average person  
7 would have been exposed to in any given week?

8 A. Not with precision but it would have  
9 been a large number.

10 Q. Does the average person attend to each  
11 advertisement that they are exposed to, again,  
12 during the same time frame?

13 A. To -- if you mean to each and every  
14 advertisement, no. The ones that are more  
15 frequently exposed are the ones more likely to  
16 become familiar and recognize and attendant to.

17 Q. Do people in general tend to ignore  
18 advertising?

19 A. No.

20 Q. What is your basis for that opinion?

21 A. My knowledge of consumer behavior and  
22 marketing.

23 Q. What is the difference between a high  
24 involvement advertisement and a low involvement  
25 advertisement?

1 Pollay - direct

2 A. I'm not sure. Typically, the way  
3 involvement is used, it's to describe certain  
4 products and people's interest in the products. So  
5 it typically defines the relationship between an  
6 individual and their interest in the product  
7 category.

8 Q. Do people in general pay or tend to pay  
9 more or less attention to high involvement  
10 advertisements as opposed to low involvement  
11 advertisements?

12 A. Again, I don't know what you mean by  
13 that. People who are highly involved in a product  
14 category are likely to pay more attention to ads  
15 for those products than people who are less  
16 involved, who have a low involvement in the product  
17 category.

18 Q. Have you used the term "high  
19 involvement advertising" in your writings?

20 A. I may have, in which case I would have  
21 been referring to ads designed to appeal to  
22 consumers who are highly involved.

23 Q. And have you also used the term "low  
24 involvement advertising" in your writings?

25 A. I may have. I don't recall that



1 Pollay - direct  
2 specifically but I may have.

3 Q. Does advertising make people buy  
4 products that they don't want?

5 A. They don't want? Advertising in many  
6 cases calls products to people's attention. It  
7 often ultimately leads to their buying products  
8 they didn't even know about before the advertising.

9 Q. Do you agree that there is no guarantee  
10 that advertising will work for any particular  
11 product?

12 A. Yes.

13 Q. Do you also agree that a product can be  
14 advertised extensively and still fail in the  
15 market?

16 A. Yes.

17 Q. Do you agree that there are products  
18 that have been very successful in the market that  
19 have not been advertised at all?

20 A. No, I strain to think of examples of  
21 that.

22 Q. Is cigarette advertising different from  
23 advertising for other commercial products -- other  
24 consumer products? Excuse me.

25 A. It functions in a different context,

1 Pollay - direct

2 yes.

3 Q. How does it function in a different  
4 context?

5 A. Because of the health aspects of  
6 smoking.

7 Q. Is it your opinion that cigarette  
8 advertising is inherently false?

9 A. Yes, it's my opinion that much of it is  
10 inherently false and misleading.

11 Q. Dr. Pollay, what was Peter Rossi's  
12 information environment regarding smoking and  
13 health during the years 1945 and 1946?

14 A. In those years, he was in the military  
15 so he would have been in a more restricted  
16 information environment and would have seen  
17 primarily those things available -- advertising  
18 available in the PX, perhaps the occasional  
19 magazine and newspaper, but he would have been  
20 preoccupied with his military responsibilities.

21 Q. What magazines and newspapers was Peter  
22 Rossi reading during the years 1945 and 1946?

23 A. I do not know that specifically.

24 Q. Was there anything else about Peter  
25 Rossi's information environment in 1945 and 1946

1 Pollay - direct  
2 that was different from his information environment  
3 in the years 1942 to 1944?

4 A. If you mean in addition to his being in  
5 a restricted military circumstance, no.

6 Q. The information that he had regarding  
7 the health risk of smoking in '45 and '46 were the  
8 same then as what he had in '42 to '44?

9 A. I believe so. If you have information  
10 to the contrary, I would be willing to look at it.

11 Q. What was the impact of the information  
12 environment on Peter Rossi's smoking behavior  
13 during the years 1945 to 1946?

14 A. To reinforce his behavioral pattern of  
15 smoking. By that time, he had begun to smoke on a  
16 regular basis.

17 Q. How did the information environment  
18 reinforce his behavior in regard to smoking?

19 A. By showing him images that position the  
20 behavior as glamorous and adult and by reassuring  
21 him of the healthfulness of the behavior.

22 Q. Was he receiving any information during  
23 the years 1945 to 1946 that there were health risks  
24 associated with smoking?

25 A. Not that I know of.

50780 4801

1 Pollay - direct

2 Q. Is it your opinion that Peter Rossi's  
3 information environment during the years 1945 to  
4 1946 was no different from the information  
5 environment for the general population?

6 A. I have already answered that. He was  
7 in the military during those years so may have been  
8 more isolated than the average citizen.

9 Q. Would there have been information  
10 available to the general population that he would  
11 not have received?

12 A. Not that I know of but there might have  
13 been.

14 Q. Do you know what Peter Rossi believed  
15 about the health risk of smoking during the years  
16 1945 to 1946?

17 A. I have no information that leads me to  
18 believe that he would have anything but assurance  
19 the product was reasonably safe.

20 Q. What was Peter Rossi's information  
21 environment in the years 1947 to 1949 about the  
22 health risk of smoking?

23 A. Generally a continuation of the  
24 preceding. There were some variation in the  
25 advertising campaigns being run but they would have

50780 4802

1 Pollay - direct

2 been somewhat similar in their general themes.

3 Q. What were the variation in the  
4 advertising campaigns during those years?

5 A. There was one prominent campaign that  
6 suggested that many doctors smoked.

7 Q. Which campaign was that?

8 A. That was the Camel campaign.

9 Q. Were there any other differences in  
10 Peter Rossi's information environment regarding  
11 cigarette smoking and health during the years 1947  
12 to 1949?

13 A. Not that I know of.

14 Q. Do you know what newspapers and  
15 magazines he was reading during these years?

16 A. No, but he was back in the metropolitan  
17 New York area so I assume he was back with an  
18 opportunity for exposure to the Daily News again.

19 Q. Was there information contained in the  
20 Daily News about the health aspects of smoking?

21 A. Not that I know of but it would have  
22 been cigarette advertising.

23 Q. What was Peter Rossi's awareness during  
24 the years 1947 to 1949 of the health risk  
25 associated with smoking?

1 Pollay - direct

2 A. Presumably the same as it was before.

3 Q. Was there any difference in Peter  
4 Rossi's awareness of the health risk of smoking  
5 during those years from the general population?

6 A. No, presumably, it was the same as it  
7 was before.

8 Q. Do you have an opinion about whether or  
9 not Peter Rossi was adequately aware of the health  
10 risk of smoking during the years 1947 to 1949?

11 A. Yes, I do.

12 Q. And what is your opinion?

13 A. That he was not.

14 Q. What is the basis for your opinion?

15 A. That there were risks associated with  
16 product consumption that he was not aware of.

17 Q. And what were those risks?

18 A. Again, covering the same territory over  
19 and over again, that there had been studies in the  
20 medical literature for many years implicating  
21 cigarettes with various problems, including cancer.

22 Q. What studies in the medical literature  
23 regarding the health risk of smoking were there in  
24 1945 to 1946, to your knowledge?

25 MS. WALTERS: I'm going to give the

1 Pollay - direct

2 same objection I gave before. This is not a state  
3 of the art expert, he has general awareness and  
4 understanding. He is not being offered to give the  
5 state of the art on specifically what medical  
6 literature existed and what the cigarette industry  
7 knew or should have known or did or should not have  
8 done during that period.

9 MR. CRIST: I'm sorry, could I have her  
10 comment read back. I didn't hear it.

11 (Whereupon the record was read.)

12 Q. What information did Peter Rossi have  
13 during the years 1947 to 1949 regarding the health  
14 risks of smoking?

15 A. By all accounts, he had very little  
16 information about the health risks of smoking.

17 Q. Do you know what information he had?

18 A. Again, if you could provide me  
19 information to the contrary, I would be glad to  
20 look at it. But as far as I know, he had no  
21 particular information about the health risks of  
22 smoking.

23 Q. Is there a distinction between  
24 informational advertisements and transformational  
25 advertisements?

1 Pollay - direct

2 A. Yes, that's the distinction made in  
3 several textbooks.

4 Q. What is the distinction between  
5 informational and transformational advertisements?

6 A. The simplest way to understand it is  
7 that informational advertising seeks to change  
8 attitudes and perceptions by presentation of data  
9 and facts, argument, whereas transformational  
10 advertising seeks to influence attitudes and  
11 perceptions by playing on emotions and by  
12 dramatizing certain events, showing life-styles and  
13 things like that.

14 Q. What was Peter Rossi's information  
15 environment regarding the health risk of smoking  
16 during the years 1949 to 1951?

17 A. His information environment would have  
18 been based primarily on the advertising he saw.

19 Q. And what was the information concerning  
20 the health risk of smoking that he was receiving  
21 from advertising?

22 A. Almost nil. There would be just the  
23 opposite, there would be reassurances, if anything,  
24 about a lack of health risk, not information about  
25 the presence of health risk.



1 Pollay - direct

2 Q. Was he receiving information concerning  
3 the health risk of smoking during the years 1949 to  
4 1951 from any other source?

5 A. Not that I know of.

6 Q. What was Peter Rossi doing in 1949 to  
7 1951? Where was he living and what was he doing?

8 A. My recollection is that he was in the  
9 New York City area and I believe he was working for  
10 Schrafft's.

11 Q. Do you know what newspapers and  
12 magazines Peter Rossi was reading during the years  
13 1949 to 1951?

14 A. I don't recall specifically for those  
15 individual years.

16 Q. During the years 1949 to 1951, was his  
17 awareness regarding the health risk of smoking  
18 different from what you have described for the  
19 previous years?

20 A. I have no reason to believe that it was.

21 Q. Do you have an opinion in this case  
22 about the cause of the underperception of the  
23 health risk of smoking among members of the general  
24 population?

25 MS. WALTERS: In what years?

1 Pollay - direct

2 MR. ALLINDER: 1949 to 1951.

3 A. Yes, I do.

4 Q. And what is the cause?

5 A. The primary cause would be advertising.

6 Q. Are there any other causes?

7 A. As we noted earlier this morning, there  
8 are secondary effects of advertising that perhaps  
9 the news media wasn't doing the job it might have  
10 in retelling the story as they were appearing in  
11 the scientific community and getting that  
12 information out to the general public.

13 Q. Were there any other secondary reasons?

14 A. Those are the primary ones, advertising  
15 and secondary effects.

16 Q. Were there articles concerning the  
17 health risk of smoking appearing in newspapers and  
18 magazines during the years 1949 to 1951?

19 A. I believe there were very few but I  
20 suspect there were probably some in relatively  
21 obscure locations.

22 Q. Have you conducted any formal or  
23 informal study of smokers' understanding and  
24 awareness of health concerns related to cigarette  
25 use which you rely on for your opinions in this

1 Pollay - direct

2 case?

3 A. None other than that which have been  
4 produced.

5 Q. Which is?

6 A. I don't recall, some of the documents  
7 in the Cipollone matter and elsewhere referred to  
8 public awareness of the health risks.

9 Q. Do you recall specifically whether or  
10 not you have conducted the study to make this  
11 determination?

12 A. I have made a study of the public  
13 relations activity of the Tobacco Industry Research  
14 Committee, which in turn disclosed some information  
15 relevant to that question.

16 Q. Any others?

17 A. Not that I recall. I have done the  
18 work recently but not for this historical period.

19 Q. The work that you have done recently,  
20 do you rely on it for your opinions in this case?

21 A. Yes, it provides me with a benchmark  
22 for understanding the level of risk awareness at  
23 the present time among educated people.

24 Q. What is the recent study you are  
25 referring to?

1 Pollay - direct

2 A. It's a document which you have been  
3 given called "Risk perceptions, cigarette health  
4 risk awareness among Americans and Canadians,"  
5 which was discussed at length in the second  
6 Cipollone deposition.

7 Q. Have you done any more work on that  
8 study since your deposition in December of 1990?

9 A. No, I have not.

10 Q. What was the effect of the information  
11 environment on Peter Rossi's smoking behavior  
12 during the years 1949 to 1951?

13 A. To reinforce his behavior and  
14 perpetuate it.

15 Q. How did you determine that?

16 A. That's the general function of  
17 advertising among people who are consuming a  
18 product.

19 Q. Do you have any other basis for that  
20 opinion?

21 A. No.

22 Q. What was Peter Rossi's information  
23 environment regarding cigarettes and health during  
24 the years 1951 to 1955?

25 A. He might well have begun to hear

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1 Pollay - direct  
2 stories about cigarettes and health. There were  
3 some allegations published in the Reader's Digest  
4 in December of 1952 which he did not read but which  
5 were picked up in some other places alleging a  
6 cancer problem, cigarettes being described as  
7 causing cancer by the carton.

8 Q. What was the basis of your opinion that  
9 Peter Rossi did not read that article?

10 A. Because he was not a reader of Reader's  
11 Digest. I have seen no evidence that he read  
12 Reader's Digest or saw that article specifically.

13 Q. Did the report appearing or article  
14 appearing in the Reader's Digest in 1952 receive  
15 any notoriety in the other news media?

16 A. Some, yes.

17 Q. Was Peter Rossi aware of the Reader's  
18 Digest article from other sources or other methods  
19 other than reading it?

20 A. I don't know but I would say that there  
21 was enough discussion that chances are great that  
22 he might have been aware that there had been such  
23 an article or at least whether Reader's Digest in  
24 specific was named, that the allegations were being  
25 made. The bulk of the stories that I have seen

1 Pollay - direct

2 from that period were from the industry saying that  
3 this was all premature and unwarranted allegations.

4 Q. Did Peter Rossi receive that  
5 information?

6 A. He would have -- if he had seen  
7 anything, he would have seen the types of headlines  
8 that were in things like the New York Herald  
9 Tribune or the New York Times and Daily News and  
10 such, more commonly refutations than support of the  
11 allegations.

12 Q. What newspapers and magazines was he  
13 reading during the years 1951 to 1955?

14 A. I don't recall the specific dates but  
15 throughout his mature years, he is reported to have  
16 been reading the New York Times and Wall Street  
17 Journal on occasion and the Daily News.

18 Q. Were there articles in these  
19 publications regarding the health risk of smoking  
20 other than the reputations you have mentioned  
21 earlier?

22 A. Refutations.

23 Q. Yes, that's what I meant to say.

24 A. Not that I recall. Most of the stories  
25 I have seen, there may have been some stories that

1 Pollay - direct

2 presented some balance but they would always have  
3 included the refutation.

4 Q. How many of these stories appeared in  
5 the New York Times during the years 1951 to 1955,  
6 do you know?

7 A. I don't know.

8 Q. Do you recall them as being frequent or  
9 infrequent?

10 A. Frequency is a relative matter. They  
11 would have been relatively infrequent compared to  
12 the frequency of the advertising exposures, for  
13 example, and relatively infrequent compared to the  
14 frequency of sports news, for another example, but  
15 there may have been numerous stories over the  
16 several years you mentioned.

17 Q. Was Peter Rossi receiving any other  
18 information regarding the health risk associated  
19 with smoking during the years 1951 to 1955?

20 A. Yes, I would say so in that those years  
21 were the years in which the filter products were  
22 first brought into prominence and the presentation  
23 of filter products implies a rationale for that  
24 type of product, that is, there has to be some  
25 reason for filter products so that, in a sense, is

1 Pollay - direct

2 solving a health problem.

3 Q. Is it your opinion that Peter Rossi  
4 read these advertisements?

5 A. Yes, that he, like all members of the  
6 society, would have been exposed to this kind of  
7 advertising.

8 Q. Did he receive a message from this  
9 advertising?

10 A. Yes.

11 Q. And what was the message?

12 A. That certain manufacturers were  
13 offering health protection because of the filter  
14 products they were now producing.

15 Q. Was Peter Rossi receiving any  
16 information during the years 1951 to 1955 in  
17 addition to, other than what you have already  
18 testified to, there were health risks associated  
19 with cigarette smoking?

20 A. You mean in addition to the news  
21 stories and the advertising?

22 Q. That you have already testified to,  
23 yes.

24 A. Not that I know of.

25 Q. Where was Peter Rossi residing during



1 Pollay - direct

2 the years 1951 to 1955?

3 A. I don't recall.

4 Q. Do you recall where he was residing  
5 during the years 1949 to 1951?

6 A. No, I don't remember the addresses. In  
7 the metropolitan New York area but I don't recall.

8 Q. Was he --

9 A. Excuse me, I'm confused. He was still  
10 in school in those days. Sorry. He goes to Alfred  
11 University '47 through '49 and then he is finishing  
12 degrees at the University of Georgia in '49 and  
13 '51.

14 Q. And what was he doing in the years 1951  
15 to 1955?

16 A. I believe he returned to New York at  
17 that stage, the metropolitan area.

18 Q. What was Peter Rossi's awareness  
19 concerning the health risk of smoking during the  
20 years 1951 to 1955?

21 A. I believe that's redundant with what we  
22 have already talked about, that he may have heard  
23 refutations and -- allegations and refutations  
24 about cigarettes and cancer and that he would have  
25 seen a great variety of ads starting in 1952 and

1 Pollay - direct

2 thereafter offering health protection through the  
3 filtered products.

4 Q. Did Peter Rossi have a concern during  
5 the years 1951 to 1955 about the health aspects of  
6 smoking?

7 A. More probably than not, even if he  
8 heard the allegations, he would not have believed  
9 them.

10 Q. What is the basis for your opinion?

11 A. Survey work done by the Tobacco  
12 Industry Research Council, maybe Committee, not  
13 Council, TIRC. I guess to be more precise than  
14 that, the surveys were done by Hill & Knowlton,  
15 public relations firm working on their behalf.

16 Q. What effect did the information  
17 environment have on Peter Rossi's smoking behavior  
18 during the years 1951 to 1955?

19 A. None that I know of.

20 Q. Does that mean no influence whatsoever?

21 A. It may have increased his thought that  
22 there might be some health risks but as I say, more  
23 probably than not, he would have not believed that  
24 those were valid, that he would have accepted the  
25 refutation by the cigarette firms and the

1 Pollay - direct  
2 allegations and the assertions in their advertising  
3 but he may have, as I say, been starting to pay  
4 some attention to the health aspects of smoking.

5 Q. If cigarette advertising had stopped in  
6 the year 1955, would Peter Rossi's smoking behavior  
7 have changed?

8 A. Probably not, certainly not in the  
9 short run because by that time, he is quite  
10 substantially addicted to nicotine.

11 Q. What is the basis of your opinion  
12 concerning that?

13 A. His heavy smoking consumption rate over  
14 the preceding eight years.

15 Q. If cigarette advertising had stopped in  
16 the year 1951, would Peter Rossi's smoking behavior  
17 have changed?

18 A. Changed when?

19 Q. 1951. If cigarette advertising had  
20 halted altogether in 1951, would Peter Rossi's  
21 smoking behavior have been different?

22 A. In 1951?

23 Q. Subsequent to 1951.

24 A. Subsequent to 1951, possibly at some  
25 subsequent date. The function of cigarette

1 Pollay - direct  
2 advertising for existing smokers is to offer  
3 reassurance and reinforcement. In the absence of  
4 that cigarette advertising, if and when people  
5 contemplate or attempt quitting, the lack of that  
6 reinforcement makes their quitting efforts far more  
7 likely to be successful.

8 Q. How were the advertisements for filter  
9 cigarettes during the years 1951 to 1955  
10 influential on Peter Rossi's smoking behavior?

11 A. This has already been pointed out. His  
12 smoking behavior does not change.

13 Q. Did they have an influence on his  
14 smoking behavior?

15 A. Apparently not if his behavior has not  
16 changed. It may have well influenced his attitudes  
17 and perceptions.

18 Q. Do you have an opinion about whether it  
19 influenced his attitudes and perceptions?

20 A. Yes, I do.

21 Q. What is your opinion?

22 A. As I already stated, it's likely to  
23 have led him to believe that there might be a  
24 health risk and that that health risk was being  
25 responded to by firms offering filtered products.

1 Pollay - direct

2 Q. Do you know where Peter Rossi was  
3 employed during the years 1951 to 1955?

4 A. As I mentioned before, I believe his  
5 first employment was with Schrafft's. I  
6 misattributed the time earlier but I believe during  
7 this period, he would have been working with  
8 Schrafft's.

9 Q. What was Peter Rossi's information  
10 environment regarding cigarettes and health during  
11 the years 1955 to 1958?

12 A. He would have seen a continuing amount  
13 of promotion on behalf of filtered products. More  
14 than half of the cigarette advertising by 1955 was  
15 for filtered product.

16 Q. Did the information environment in the  
17 years 1955 to 1958 change in any other respect from  
18 the information environment for the years 1951 to  
19 1955?

20 A. From '51 to '55, I believe it was  
21 similar to the preceding period in that there were  
22 some stories reporting allegations of health  
23 consequences and even more stories refuting that.

24 Q. Where was Peter Rossi residing in the  
25 years 1955 to 1958?

1 Pollay - direct

2 A. I don't recall specifically.

3 Q. Do you recall where he was employed?

4 A. I don't recall specifically.

5 MS. WALTERS: Dr. Pollay, I'm going to  
6 instruct you that you can refer to any of these  
7 documents to refresh your recollection in order to  
8 answer.

9 THE WITNESS: For these matters of  
10 fact, if this is not a memory test, we can pull out  
11 the chronological summaries that exist. I don't  
12 think he wants to --

13 MS. WALTERS: I don't think that's for  
14 the record.

15 MR. CRIST: That was a snide comment.

16 MS. WALTERS: Can he refer to any of  
17 the documents to refresh his recollection?

18 MR. ALLINDER: If he wishes to refresh  
19 his recollection, he may do so.

20

21 BY MR. ALLINDER:

22 Q. Would you like to refresh your  
23 recollection before you respond to the previously  
24 asked question concerning where he was residing and  
25 where he was employed during the years 1955 to

1 Pollay - direct

2 1958?

3 A. Yes, between '55 and '58, he was  
4 employed at Queensboro Farm Products in Long  
5 Island.

6 Q. What is it that you have referred to to  
7 refresh your recollection, Dr. Pollay?

8 A. The chronology of Peter Rossi.

9 Q. Is there an exhibit number at the  
10 bottom of that document?

11 A. Yes, Exhibit 11.

12 Q. Dr. Pollay, do you know what newspapers  
13 and magazines Peter Rossi was reading during the  
14 years 1955 to 1958?

15 A. No. I repeat that my recollection is  
16 that during his adult years, he was a regular  
17 reader of the New York Times and the Wall Street  
18 Journal and the Daily News.

19 Q. Did Peter Rossi have any other sources  
20 of information regarding the health risk of smoking  
21 other than the advertisements and the articles  
22 appearing in the New York Times?

23 MS. WALTERS: And the magazines that he  
24 read.

25 A. The news and advertising would

1 Pollay - direct

2 constitute the information environment, as we have  
3 described it. I don't know, I mean perhaps he did  
4 but none that I know of.

5 Q. Was the information environment  
6 conveyed by cigarette advertising during the years  
7 1955 to 1958 any different than the information  
8 environment as a whole in those same years?

9 A. Yes.

10 Q. In what respect?

11 A. It was communicating that filtered  
12 products were offering health protection.

13 Q. What was Peter Rossi's awareness during  
14 the years 1955 to 1958 of the health risk of  
15 smoking?

16 A. I would say not much different than the  
17 preceding period but probably a growing awareness.

18 Q. Was he concerned about the health  
19 aspects of smoking during the years 1955 to 1958?

20 A. I would judge his concern to be  
21 growing.

22 Q. Was his belief regarding the health  
23 aspects of smoking different from his awareness  
24 during the years 1955 to 1958?

25 A. Yes, because if you mean by that



1 Pollay - direct  
2 awareness might mean awareness that someone alleges  
3 something, a belief would refer to the extent to  
4 which you believed the allegation to be true. It  
5 would be a distinction.

6 Q. How was his belief different from his  
7 awareness of the health aspects of smoking in the  
8 years 1955 to 1958?

9 A. His awareness would always precede his  
10 beliefs. That is, you would have to first be aware  
11 of allegations before you would then come with  
12 repetition to believe them to be possibly true.

13 Q. Did Peter Rossi believe the health risk  
14 that had been associated with smoking during the  
15 years 1955 to 1958, those that he had heard about?

16 A. Again, as before, more likely than not,  
17 he disbelieved them but at some stage, he acts as  
18 if he does believe that there might be some risks.  
19 We can't be certain how likely he judged those  
20 risks to be. But he acts to shift to a filtered  
21 product, offering him protection if those risks do,  
22 indeed, exist.

23 Q. When did he do that?

24 A. My opinion is that the best estimate  
25 for that time is about 1958, some couple of years

1 Pollay - direct  
2 before Winnie was born.

3 Q. Did he act in any other way that would  
4 indicate a belief on his part of the health risk  
5 that had been associated with smoking?

6 A. Not that I recall.

7 Q. What was the effect of cigarette  
8 advertising on Peter Rossi's smoking behavior  
9 during the years 1955 to 1958?

10 A. To call his attention to both the  
11 health problem and the availability of products  
12 that were responsive to -- presented a response to  
13 the problem.

14 Q. What was Peter Rossi's information  
15 environment concerning the health risk of smoking  
16 during the years 1958 to 1963?

17 A. Again, it would have been predominantly  
18 that acquired through advertising and secondarily,  
19 that through available news.

20 Q. What information was he receiving  
21 during the years 1958 to 1963 concerning the health  
22 risk associated with smoking?

23 A. That if such a risk exists, that  
24 smoking filtered cigarettes eliminated that risk.

25 Q. Was that message communicated through

1 Pollay - direct  
2 cigarette advertisements?

3 A. Yes.

4 Q. Was it communicated in any other way?

5 A. I believe so. I believe some of the  
6 news stories that were challenging the conclusions  
7 that cigarettes were a health problem would also  
8 comment on the filter, the innovations of filters  
9 and the number of filter products available and  
10 their growing popularity.

11 Q. Which publications did these news  
12 stories appear in?

13 A. They appeared in a variety of places.  
14 Many newspapers would have the occasional story  
15 about this. It would be a continuing series of  
16 studies coming out of the medical community and a  
17 heavy flow of press releases coming out of the  
18 tobacco research committee feeding stories to the  
19 journalists.

20 Q. Did these stories appear in any  
21 publications that Peter Rossi read?

22 A. Certainly they did.

23 Q. Which ones?

24 A. I'm sure all of them.

25 Q. Which newspapers and magazines was

1 Pollay - direct

2 Peter Rossi reading during the years 1958 to 1963?

3 A. Throughout his adult years, he read the  
4 New York Times, the Daily News, the Wall Street  
5 Journal.

6 Q. What was Peter Rossi's belief  
7 concerning the health aspects of smoking during the  
8 years 1958 to 1963?

9 A. I think by that time, he comes to  
10 believe that if the health risks that are alleged  
11 are indeed true, that a filtered product is the  
12 appropriate behavior, that he should smoke a  
13 filtered product.

14 Q. Did he believe the health risks  
15 associated with cigarette smoking were true?

16 A. That I don't know. The typical smokers  
17 did not but I judge him to be a prudent individual  
18 and so he might have come to the conclusion that  
19 just on the chance that they were, that it was  
20 appropriate for him to smoke a filtered product.

21 Q. During the years 1958 to 1963, had  
22 Peter Rossi personalized the health risk that had  
23 been associated with cigarette smoking?

24 A. Yes, in the sense that he had taken  
25 personal action. He switched his own brand of

1 Pollay - direct  
2 smoking, his own smoking behavior.

3 Q. What were the health risks associated  
4 with smoking that had been reported during the  
5 years 1958 to 1963?

6 A. The primary focus of concern in those  
7 days was with cancer.

8 Q. Did Peter Rossi believe during the  
9 years 1958 to 1963 that if he continued to smoke  
10 nonfilter cigarettes, he would get lung cancer?

11 A. I think that at least in spirit is a  
12 question similar to what you asked before. I doubt  
13 that. I think more probably than not, he did not  
14 have that conclusion but did judge that if such  
15 risks were present, that an appropriate response to  
16 protect himself against those risks would be to  
17 smoke filters.

18 Q. What was Peter Rossi's information  
19 environment regarding the health risk associated  
20 with smoking during the years 1964 to 1965?

21 A. The year 1964, '65 is the period of  
22 time when the Surgeon General issues his first  
23 report on smoking and health. That story made the  
24 news for a day or two and he would have no doubt  
25 seen that and I believe subsequent to that, he

1 Pollay - direct

2 engaged in a discussion with his doctor, Dr.

3 Ambrose.

4 Q. What did Dr. Ambrose tell Peter Rossi  
5 concerning the health risk associated with smoking?

6 A. I think Dr. Ambrose agreed with the  
7 Surgeon General that the cancer risk was real.

8 Q. Did Peter Rossi believe the cancer risk  
9 to be real in 1964 to 1965?

10 A. I can't be certain of that. He may  
11 well have felt that smoking Kent was an equally  
12 real response to that risk.

13 Q. Did Peter Rossi believe in 1964 to 1965  
14 that if he smoked Kent cigarettes, he would not get  
15 lung cancer?

16 A. More than probably than not, I judge  
17 him -- that is what he would conclude. That is the  
18 character of the advertising reassurance.

19 Q. Did Peter Rossi believe during the  
20 years 1964 to 1965 that if he smoked another brand  
21 of cigarettes, that he would get lung cancer?

22 A. I can't be certain of that but it would  
23 be my opinion that he and anybody in those days  
24 would probably think that the risk of lung cancer  
25 from smoking an unfiltered product would be higher.

1 Pollay - direct

2 and perhaps even would have judged some of the  
3 filtered products to be inferior products. The  
4 product he smoked was judged by most people to be  
5 the safest product on the marketplace.

6 Q. Did Peter Rossi believe that Kent  
7 cigarettes were the safest product on the  
8 marketplace?

9 A. Yes, more probably than not, he did.

10 Q. What is the basis of your opinion?

11 A. The reports which survey smokers'  
12 opinions of perceptions of different brands,  
13 wherein Kent is identified as that having the  
14 highest safety rating.

15 Q. Which surveys are you referring to?

16 A. I don't recall but the corporate  
17 documents produced in this case.

18 Q. You are referring to the corporate  
19 documents that were produced prior to your  
20 deposition in this case?

21 A. That's correct.

22 Q. And which we reviewed earlier?

23 A. That's correct.

24 Q. Do you have any other basis for your  
25 opinion on that?

1 Pollay - direct

2 A. That's definitely the primary one with  
3 respect to how Kent was perceived. I have other  
4 opinions, of course, about what Kent was saying and  
5 what I judge its intended message to be.

6 Q. Where was Peter Rossi living during the  
7 years 1964 to 1965?

8 A. In Westfield.

9 Q. New Jersey? Is that in New Jersey?

10 A. Yes.

11 Q. Were Peter Rossi's reading habits  
12 during the years 1964 to 1965 different from those  
13 that you have described already for the earlier  
14 years?

15 A. Slightly, that his taste in local  
16 newspapers might have shifted, he might have  
17 started reading something like the Bergen Record  
18 and not read as many of the metropolitan New York  
19 papers.

20 Q. Was he still reading Time Magazine?

21 A. I believe so.

22 Q. Was he still reading the Wall Street  
23 Journal?

24 A. I believe so but again, it's possible  
25 that he would read those with less frequency.



1 Pollay - direct

2 There is only so much time he can spend reading, of  
3 course.

4 Q. Was he still reading the New York  
5 Times?

6 A. As far as I know. I don't have any  
7 information about the variability in that behavior.

8 Q. Do you know what newspapers and  
9 magazines Peter Rossi subscribed to?

10 A. I believe Time and Life were his  
11 primary subscriptions.

12 Q. Would Peter Rossi have read articles  
13 appearing in Time and Life Magazines concerning the  
14 health risk associated with cigarette smoking?

15 A. Probably.

16 Q. Have you determined what articles  
17 regarding cigarette smoking and health appeared in  
18 the publications Peter Rossi read?

19 A. I have seen them, yes.

20 Q. Which ones are you referring to?

21 A. The ones that are in the binders.

22 Q. Are you referring to Exhibit 8?

23 A. Yes.

24 Q. Did the sources of information  
25 regarding cigarette smoking and health change for

1 Pollay - direct

2 Peter Rossi during the years 1964 to 1965?

3 A. As we mentioned, he changed his address  
4 so he may have had a change of habit of his local  
5 newspaper but aside from that, he would be exposed  
6 to those things he read throughout his adult years.

7 Q. Did Peter Rossi consider Dr. Ambrose to  
8 be a credible source of information regarding  
9 smoking and health?

10 A. I assume that he had some trust in his  
11 doctor. I mean his doctor, no doubt echoing the  
12 Surgeon General opinion, hadn't done his own  
13 independent research on the topic.

14 Q. Did Peter Rossi believe that the  
15 Surgeon General of the United States was a credible  
16 source of information regarding health risk  
17 associated with smoking and health?

18 A. I would presume so, although there was  
19 a lot of things he would have been exposed to that  
20 would have cast doubt on that.

21 Q. Did Peter Rossi think that cigarette  
22 advertisements were a credible source of  
23 information regarding the health risk associated  
24 with smoking and health?

25 A. Yes.

1 Pollay - direct

2 Q. Do you have an opinion about whether  
3 Peter Rossi thought that Dr. Ambrose was a more  
4 credible source or a less credible source for  
5 health information than cigarette advertisements?

6 A. Yes, I would presume that he would  
7 judge the doctor to be a more credible source but  
8 what the advertising may lack in credibility it  
9 makes up for in repetition.

10 Q. Does the repetition of advertising  
11 overcome a single communication of information that  
12 is credible?

13 A. Yes.

14 Q. Did Peter Rossi consider the Tobacco  
15 Industry Research Council or the Council for  
16 Tobacco Research to be a credible source of  
17 information regarding the health risk associated  
18 with smoking and health?

19 A. He probably would not even have known  
20 of their existence because most of the stories that  
21 they planted in the media were not attributed to  
22 them.

23 Q. When you use the term "planted," Dr.  
24 Pollay, what do you mean?

25 A. I mean the crafting of stories and

1 Pollay - direct  
2 their distribution to get publicity for the tobacco  
3 industry point of view.

4 Q. Are you referring only to stories that  
5 were published in newspapers and magazines that  
6 Peter Rossi read?

7 A. No, I refer to stories published in all  
8 newspapers and magazines.

9 Q. Was Peter Rossi influenced by news  
10 stories appearing in publications that he did not  
11 read?

12 A. No.

13 MR. ALLINDER: I think this is a good  
14 time for our afternoon break.

15 (Whereupon a recess was taken.)

16 THE WITNESS: I should offer a  
17 supplemental observation. You were asking in your  
18 earlier questions about the reading and information  
19 that Peter might have been exposed to. I was  
20 responding just mentioning newspapers. He is also  
21 a reader of magazines and generally, of course, an  
22 avid reader. So Time and Life Magazines are likely  
23 to be part of his reading habit before the  
24 sixties. It's been mentioned in the sixties but  
25 should have been mentioned earlier, as well. In

1 Pollay - direct

2 addition to that, radio and television, he has  
3 television early on in his life compared to the  
4 average.

5 Q. Dr. Pollay, when did Peter Rossi read  
6 Time and Life Magazine, during what years?

7 A. I think he read them most heavily  
8 during the sixties and seventies because during the  
9 fifties, he was busy establishing himself on the  
10 job and had a young family. So it was more  
11 difficult to find the time to do leisure reading.

12 Q. In the sixties and seventies, did he  
13 read Time and Life twice as much as he read it  
14 during the fifties or less than twice as much?

15 A. I can't answer with that kind of  
16 precision.

17 Q. Was he a subscriber to Time and Life  
18 during the 1950's?

19 A. I believe he was a subscriber to Life.  
20 I don't recall whether he also subscribed to Time  
21 or just read it frequently.

22 Q. Were there articles in these  
23 publications in the years prior to 1965, 1965 and  
24 prior, relating to smoking and health?

25 A. Yes, there would have been some in the

1 Pollay - direct

2 1950's and perhaps even before then but the first  
3 flurry of such publishing was in 1952, late '52 and  
4 then '53 and '54.

5 Q. What was the contribution of these  
6 articles to Peter Rossi's information environment  
7 regarding smoking and health?

8 MS. WALTERS: Which articles?

9 MR. ALLINDER: The Time and Life  
10 articles we are referring to.

11 A. I would say to plant seeds of  
12 suspicion, perhaps, that cigarettes might be a  
13 serious health risk.

14 Q. When did articles appearing in Time and  
15 Life Magazine plant the seeds of suspicion in Peter  
16 Rossi that there might be serious health risk  
17 associated with smoking?

18 A. Whenever -- during the period of the  
19 1950's and sixties.

20 Q. The seeds of suspicion planted by these  
21 articles occurred during the entire 1950's and  
22 1960's time frame?

23 A. No, as I say, the most intense  
24 publicity occurred in 1953 and '54, the first of  
25 what was known as the health scares, and then there

1 Pollay - direct

2 is another surge of activity around the Surgeon  
3 General report in 1964 and then there are more  
4 minor stories and the refutations of those stories  
5 at other periods during that interval.

6 Q. The refutations of the stories linking  
7 health risk to cigarette smoking, did they appear  
8 in the same articles or in different articles that  
9 you have referred to?

10 A. Both.

11 Q. During what years did information  
12 broadcast over television contribute to Peter  
13 Rossi's information environment regarding cigarette  
14 smoking and health?

15 A. During all the years in which he had  
16 watched television. He has television from before  
17 his marriage, so from about 1950.

18 Q. What is the health scare you indicated  
19 that occurred during the years 1953 and 1954?

20 A. That's the industry term for the fears  
21 that were following upon the stories like the  
22 Reader's Digest article, "Cancer by the carton."

23 Q. And by industry term, you mean a  
24 cigarette industry term?

25 A. That's correct.

1 Pollay - direct

2 Q. Was the term "health scare" used by  
3 anyone other than members of the cigarette  
4 industry?

5 A. Not that I recall, although people  
6 since who write about the history of that period  
7 will, of course, use the same term.

8 Q. What was the genesis of the health  
9 scare that occurred in 1953 and 1954?

10 A. Studies in the medical literature which  
11 were given some popular exposure by the primary  
12 outlet being this article in Reader's Digest. It  
13 actually had been published earlier in a more  
14 obscure publication called the Christian Herald.

15 Q. Did an industry refutation appear in  
16 the 1952 Reader's Digest article?

17 A. No, it did not, reputedly because  
18 Reader's Digest did not have any cigarette  
19 advertising income in jeopardy.

20 Q. Were there any other causes of the  
21 health scare which occurred in 1953 and 1954 other  
22 than the articles that appeared in Reader's Digest  
23 and other publications?

24 A. Those stories echoed somewhat  
25 throughout some other media and then we mentioned



1 Pollay - direct  
2 before the industry response had already begun by  
3 the offering of filter cigarettes, on the one hand,  
4 and by strengthening the health claims for the  
5 conventional products on the other. So health  
6 became the focus of attention as the criterion by  
7 which cigarettes were offered up in judgment.

8 Q. Was the basis of the stories which  
9 generated the health scare in 1953 and 1954  
10 research that was done by scientists?

11 A. Yes.

12 Q. Was that reported in the popular press?

13 A. I'm a little confused. We are talking  
14 about the popular press reporting of something you  
15 asked was scientific and I said yes, it was  
16 scientific.

17 Q. My question is was it reported in the  
18 popular press that the health risks associated with  
19 cigarette smoking were the result of research  
20 conducted by scientists?

21 A. Yes, some of the articles would have  
22 disclosed the nature of the research and the  
23 identities of the people who had done the research  
24 and perhaps -- a thorough article would have done  
25 that as well as the industry counter-arguments

1 Pollay - direct  
2 about less conclusive research.

3 Q. When did the industry counter-arguments  
4 occur?

5 A. Almost instantly, throughout '53, '54  
6 and all the mid-fifties, stories were distributed  
7 on behalf of the industry and also advertising  
8 undertaken on behalf of the industry.

9 Q. In 1953 and 1954, was Peter Rossi aware  
10 of the health scare?

11 A. He certainly would have been aware of  
12 the advertising talking about the health promises.

13 Q. Was he aware of the reports of  
14 scientific research linking smoking to various  
15 diseases or health concerns?

16 A. I don't know. More likely than not, if  
17 he was aware of that -- more likely than not, he  
18 was aware of the allegation and more likely than  
19 not, he did not believe the allegation.

20 Q. What is the basis of your opinion that  
21 more likely than not, Peter Rossi did not believe  
22 the allegations associating smoking with health  
23 concerns during the years 1953 and 1954?

24 A. The data gathered by Hill & Knowlton on  
25 behalf of the Tobacco Industry Research Committee.

1 Pollay - direct

2 MS. WALTERS: By the way, this was  
3 asked and answered earlier in detail.

4 MR. CRIST: I'm sorry, I didn't hear  
5 that comment. Speak up.

6 MS. WALTERS: This whole thing, this  
7 last series of questions and responses are a repeat  
8 of what was already gone over in this deposition  
9 earlier.

10 Q. During the years 1953 and 1954, did  
11 Peter Rossi believe that cigarette advertising was  
12 a more credible source of information regarding the  
13 health risk associated with smoking than results of  
14 scientific research published in the popular press?

15 A. I'm not certain of that. It would, of  
16 course, depend how those results are reported and  
17 how they are worded, the weight that would be given  
18 to them, and I think even if those were presented  
19 in a way that made the allegations highly credible,  
20 you must remember that those results appear with  
21 relative infrequency and the advertising appears  
22 with great frequency in the multiple media.

23 Q. Is a consumer more likely to pay  
24 attention to advertisements for products that he or  
25 she uses than advertisements for products that he

1 Pollay - direct  
2 or she does not use?

3 A. More likely to pay attention to  
4 products that you use or anticipate using.

5 Q. Did Peter Rossi read advertisements for  
6 brands of cigarettes that he didn't smoke?

7 A. Probably.

8 Q. Did he do this during all the time  
9 period '42 through 1965 or is there a difference  
10 depending upon the time period?

11 A. I wouldn't say there should be a sharp  
12 difference before the time period but he might have  
13 paid attention to a greater diversity of the ads  
14 before his habits are established and once he has a  
15 brand loyalty, he might be more inclined to pay  
16 attention to the advertising for his own brand.  
17 But I think the term you used before of reading ads  
18 is a little misleading because people are exposed  
19 to ads and impressions are formed. It's relatively  
20 uncommon for people to read ads in close detail.

21 Q. Did Peter Rossi read advertising for  
22 Kent cigarettes?

23 MS. WALTERS: I'm just going to object  
24 to your using the term "read" because Dr. Pollay  
25 has already said earlier that's really an incorrect

1 Pollay - direct  
2 description, an inaccurate description of the use  
3 of the term, and you repeatedly are using it in  
4 your questioning. You can answer that.

5 A. I would say that yes, he would have  
6 been exposed to Kent advertising. It was the most  
7 substantial advertising campaign in history at the  
8 time and so it was inevitable that he was exposed  
9 to it. It was everywhere on all the media and as a  
10 smoker, he is likely to have taken some interest in  
11 it. It was presented in an authoritative tone of  
12 voice.

13 Q. When did Peter Rossi have an interest  
14 in Kent advertising?

15 A. An interest in advertising?

16 Q. An interest in advertising for Kent  
17 cigarettes.

18 MS. WALTERS: Can you read that  
19 question back.

20 (Whereupon the record was read.)

21 MS. WALTERS: When did he begin to be  
22 interested in it?

23 MR. ALLINDER: We can start with the  
24 beginning.

25 A. I assume that he, like most smokers,

1 Pollay - direct

2 would have taken an interest in the launch of the  
3 product in 1952 and '53, especially in those ads  
4 which reported American Medical Association tests  
5 that were ostensibly proving that the best filter  
6 available was the one offered in Kent.

7 Q. What is the basis of your opinion that  
8 most smokers in 1952 and 1953 were interested in  
9 Kent advertising?

10 A. Because it was presented as very  
11 newsworthy. That was the style of the advertising.

12 Q. Do you have any other basis for your  
13 opinion?

14 A. Yes. It was presented in very dramatic  
15 form, that is, double page foldouts and other large  
16 format advertising was used to herald the event and  
17 major buys were done on television to herald the  
18 event. It was a very significant product launch.

19 Q. Did Kent advertising during the years  
20 1952 to 1953 affect Peter Rossi's smoking behavior?

21 A. His behavior, no. He continued to  
22 smoke Chesterfield.

23 Q. Did Kent advertisements during the  
24 years 1952 to 1953 influence Peter Rossi's  
25 information environment regarding the health risk

1 Pollay - direct  
2 associated with smoking?

3 A. Yes.

4 Q. In what way?

5 A. It, like other filter advertising, was  
6 suggesting that there might be a health risk and  
7 that if such a risk existed, that this product was  
8 a response to that.

9 Q. Did Peter Rossi during the years 1952  
10 to 1953 receive a message from Kent cigarette  
11 advertisements that there may be a health risk  
12 associated with smoking?

13 A. I believe so. That is the implicit  
14 rationale for why a filtered product, to offer  
15 health protection.

16 Q. Did Peter Rossi remain interested in  
17 Kent advertising in the years 1953 to 1954?

18 A. Peter Rossi was a smoker and as a  
19 smoker, would have paid more attention to cigarette  
20 advertising than to advertising for other products,  
21 including Kent.

22 Q. Was Peter Rossi interested in  
23 advertisements for other brands of cigarettes  
24 during the years 1953 to 1955?

25 A. I believe I just answered that. As a

1 Pollay - direct

2 smoker, he would pay more attention to cigarette  
3 ads than he would to ads for products for which he  
4 was not a consumer. So products for all brands  
5 would come to his attention.

6 Q. Is it your opinion that Peter Rossi  
7 would have been no more interested in the  
8 advertisements for Kents than he would have been in  
9 the advertisements for other brands of cigarettes?

10 A. No.

11 Q. Why is that?

12 A. My professional judgment about the  
13 creative effectiveness of the Kent campaign was  
14 presented to attract attention through its  
15 authoritative voice.

16 Q. So he was more interested in Kent  
17 advertising during the years 1952 to 1953 because  
18 of the brand launch, the media campaign. Is that  
19 correct?

20 A. No, I wouldn't say -- no, I would say  
21 that the ads were made more interesting than some  
22 of the competitive advertising.

23 Q. Was he more interested in Kent ads than  
24 advertisements for other brands of cigarettes  
25 during the years following 1953?



1 Pollay - direct

2 A. Again, it's my professional judgment  
3 that the Kent campaign was made more interesting  
4 than some of the other filter campaigns of the day.

5 Q. And your opinion --

6 A. It was more readily available, as  
7 well. It was bankrolled with more money so it was  
8 more accessible to him.

9 Q. Is that your opinion regarding Kent  
10 advertising for all years from 1953 to 1965 or is  
11 it limited to certain years?

12 A. That's my opinion for the early years.  
13 There were other brands that were quite successful  
14 coming on stream in the later 1950's.

15 Q. Did Peter Rossi remain more interested  
16 in Kent advertisements than the advertisements for  
17 other brands of cigarettes in the years after 1953?

18 A. Again, it's my judgment that in that  
19 period, the ads were made more interesting. He was  
20 a smoker so he was generally interested in  
21 cigarette advertising. The Kent ads, in my  
22 judgment, were made particularly newsworthy and  
23 were particularly prominent in the media so that  
24 they were more likely to have been impactful than  
25 the less frequently or less well designed -- less

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1 Pollay - direct  
2 frequently exposed or less well designed  
3 advertising.

4 Q. Is that your opinion for the years 1953  
5 through 1965?

6 A. No, it's not. You asked that question  
7 already.

8 Q. Is that your opinion for the years 1953  
9 through 1957?

10 A. Yes, generally so. The other  
11 successful product launches tended to occur in the  
12 later part of the 1950's.

13 Q. How was Kent advertising more  
14 interesting than advertising for other brands of  
15 cigarettes during the late 1950's, the mid-and late  
16 1950's?

17 MS. WALTERS: I think that has been  
18 asked and answered about three or four times.

19 MR. ALLINDER: I don't believe so.

20 A. It was presented in an authoritative  
21 tone of voice and presented the filter ads endorsed  
22 by the American Medical Association as the most  
23 effective filter available on the market and the  
24 ads themselves included scientific demonstrations,  
25 a little experiment was performed.

1 Pollay - direct

2 Q. Why did Peter Rossi switch to Kent  
3 cigarettes in 1958?

4 MS. WALTERS: He said approximately  
5 1958. You can answer.

6 A. It's my opinion that he did so to  
7 respond to any health risks that might be present.

8 Q. Dr. Pollay, can you take the notebook  
9 which is marked Exhibit 8 in front of you. Let me  
10 ask you to turn to the second section that's marked  
11 "Kent." Would you turn to the first advertisement,  
12 please. There is a notation at the bottom of the  
13 page that reads T 6/29/53. Do you know what that  
14 refers to?

15 A. I take it to refer to Time Magazine and  
16 the date of publication.

17 Q. Do you know whether Peter Rossi saw  
18 this advertisement?

19 A. I can't be certain that he saw this ad  
20 in specific but this ad is part of a campaign whose  
21 variations you see in all the subsequent pages and  
22 we can be quite certain that he would have seen the  
23 campaign at some point.

24 Q. Was this advertisement different than  
25 advertisements that were appearing for other brands

1 Pollay - direct  
2 of cigarettes at this time, 1953?

3 A. Yes, it is.

4 Q. In what way?

5 A. This ad is claiming that it is the  
6 number one choice of all leading cigarettes.

7 Q. Is it different in any other way?

8 A. It has the unique Micronite filter,  
9 which was something that only this brand offered.

10 Q. Is there a message in this  
11 advertisement other than what you have already  
12 indicated?

13 A. Yes, that Kent offers greater health  
14 protection than any other cigarette.

15 Q. And where is it that you see that in  
16 the advertisement?

17 A. At several places -- well, I judge it  
18 to be the theme of the entire advertisement but  
19 it's specified in exactly those words at several  
20 places throughout the text and there is a  
21 scientific demonstration simulated in a couple of  
22 panels that provide eyewitness proof.

23 Q. If Peter Rossi was exposed to this  
24 advertisement, do you know what message he would  
25 have received from the ad?

1 Pollay - direct

2 A. That if you were concerned about  
3 cancer, that switching to Kent would be an  
4 appropriate response.

5 Q. What is the basis of your opinion?

6 A. My reading of the ad.

7 Q. Is it possible that different people  
8 can read the same advertisement and understand it  
9 differently?

10 A. Yes, that's a possibility, but I think  
11 it would take a perverse reading of this ad not to  
12 conclude that it's offering health protection.

13 Q. Is special training, education or  
14 experience required in order to correctly read the  
15 message of the advertisement?

16 A. It depends on the nature of the  
17 advertisement. When the advertisement is primarily  
18 verbal, like this, it's designed obviously to be  
19 read by the consumer and comprehended by the  
20 consumer. Much advertising is visual and its  
21 intent is nonverbal and may be more subliminal to  
22 the average consumer; that is, beneath the average  
23 consumer's awareness.

24 Q. Do you have an opinion about whether or  
25 not this advertisement influenced Peter Rossi's

1 Pollay - direct

2 information environment concerning the health risk  
3 of smoking?

4 A. I have an opinion about the campaign.  
5 As I mentioned, I can't be certain that he saw this  
6 specific ad but the campaign which ran for a number  
7 of months with great consistency I do have an  
8 opinion about.

9 Q. And what is that opinion?

10 A. That it effectively communicates that  
11 Kent is in a class by itself and offering health  
12 protection because of its Micronite filter.

13 Q. Was the use of a coined phrase such as  
14 "Micronite" unusual or distinctive for Kent  
15 advertising during this time period?

16 A. It was the only one to use the phrase  
17 "Micronite."

18 Q. Were there other products that also  
19 used coined phrases to describe unique aspects of  
20 their products?

21 A. Yes, there were, and there still are,  
22 of course.

23 Q. Was that a common advertising technique  
24 during the time frame 1953?

25 A. I'm not sure what you mean by

1 Pollay - direct

2 "common." Certainly a majority of advertisers  
3 didn't do it but it was not all that rare. I mean  
4 people would readily recognize that as a trade  
5 name.

6 Q. Is this advertising campaign or the  
7 advertising campaign that included this specific  
8 advertisement one that you would consider to be  
9 authoritative?

10 A. Yes.

11 Q. And what is the basis of your opinion?

12 A. My reading of the nature of the  
13 headlines and the presentation of science as  
14 evidenced in the large amount of fine print.

15 Q. The reference to science in the text of  
16 the advertisement makes it authoritative, in your  
17 opinion?

18 A. Yes, that definitely contributes to its  
19 authoritative nature.

20 Q. And the amount of fine print in the ad  
21 also contributes to its authoritative appearance.  
22 Is that correct?

23 A. That's correct.

24 Q. Is this an advertisement that you  
25 mentioned before that uses a scientific

1 Pollay - direct  
2 demonstration?

3 A. Yes, the panels that look like  
4 television screens are stills from the television  
5 ad that showed Kent being compared to a competitive  
6 brand.

7 Q. Was the use of the scientific  
8 demonstration in this advertisement unique among  
9 advertisements in 1953?

10 A. It wasn't unique in that other products  
11 were sometimes being used -- being promoted with  
12 scientific claims. It was relatively unique among  
13 cigarette manufacturers to do, especially a live  
14 demonstration of that nature.

15 Q. Did this advertisement or this  
16 advertising campaign, which included this  
17 advertisement, influence Peter Rossi's smoking  
18 behavior?

19 A. No, apparently not, not in the short  
20 run. Ultimately, perhaps. While it doesn't  
21 influence his behavior, as I said before, it is a  
22 contributing factor to an evolution of perceptions  
23 and attitudes about products.

24 Q. And what is the evolution of  
25 perceptions and attitudes about the products that



1 Pollay - direct

2 this advertisement performs?

3 A. It suggests that there are health risks  
4 associated with smoking. It doesn't make specific  
5 reference to cancer but it does suggest that one  
6 out of every three smokers is unusually sensitive  
7 to tars and nicotine.

8 Q. If Peter Rossi had read this  
9 advertisement, would he have understood it to  
10 indicate that other brands of cigarettes were less  
11 safe than Kent?

12 A. I think he would have understood that  
13 the majority of smokers might not be at risk, that  
14 is, the two out of three smokers might not be  
15 sensitive to it, but if you were one of the one in  
16 three who was sensitive, that Kent would offer a  
17 more effective response.

18 Q. Can you turn to the next advertisement,  
19 please. I believe this one is marked at the bottom  
20 T 7/27/53.

21 Q. Yes.

22 A. Do you have that one?

23 Q. Yes, I do.

24 Q. Is this an advertisement which Peter  
25 Rossi saw or was exposed to?

1 Pollay - direct

2 A. This is part of the same campaign,  
3 which we can be certain that he saw.

4 Q. And the basis of your opinion that he  
5 was exposed to this advertisement is what?

6 A. I didn't say that he was exposed to  
7 this specific advertisement, I said that this  
8 advertisement is part of a campaign that I'm  
9 certain that he saw. The basis for that was it was  
10 a massive campaign in all the major magazines and  
11 radio and television and newspapers and continued  
12 over many months.

13 Q. Did this advertisement affect Peter  
14 Rossi's smoking behavior?

15 A. It may not have affected his behavior  
16 instantly but it would have attributed to his  
17 changing attitudes and perceptions.

18 Q. And those change in attitudes and  
19 perceptions are those concerning whether or not  
20 there are health risks associated with smoking. Is  
21 that correct?

22 A. Whether or not there is a health risk  
23 associated and whether or not Kent was a meaningful  
24 response to that health risk.

25 Q. Is the message conveyed by this

1 Pollay - direct

2 advertisement any different than the one that we  
3 just discussed?

4 A. It may well be different in some of its  
5 detail, some of the facts and arguments that it  
6 provides, but it's unlikely to really differ in  
7 substance. It also provides a demonstration, in  
8 this case comparing Kent against four competitive  
9 products instead of against one.

10 Q. Is this another of the scientific  
11 demonstrations you mentioned?

12 A. Yes, although I don't think this is  
13 science as would be practiced by a scientist so  
14 much as for the sake of providing dramatic visuals  
15 for advertising purposes.

16 Q. Would you turn to the next  
17 advertisement, please, which is marked at the  
18 bottom T 8/17/53. What is the reference at the  
19 bottom of the page, Dr. Pollay?

20 A. T 8/17/53.

21 Q. Does that, again, refer to Time?

22 A. Yes.

23 Q. August 17, 1953?

24 A. Apparently pages six and seven of Time  
25 Magazine.

1 Pollay - direct

2 Q. Is this advertisement part of the same  
3 campaign as the two we previously discussed?

4 A. Yes, it is.

5 Q. Does it have a similar message?

6 A. Yes. It's also addressed to the one  
7 out of every three smokers who are sensitive and  
8 also provides stills of the pseudoscientific  
9 demonstration.

10 Q. Did this advertisement influence Peter  
11 Rossi's smoking behavior?

12 A. It, like the others in the campaign,  
13 however many and whichever of those he saw, would  
14 have shaped his attitudes and perceptions and  
15 ultimately, his behavior.

16 Q. Is this advertisement different in any  
17 other respect than cigarette advertisements for  
18 other brands in ways different from the ones you  
19 have already mentioned?

20 A. From other brands of cigarettes?

21 Q. That's correct.

22 A. Yes, I believe it's the only one at  
23 this point in time offering this kind of scientific  
24 demonstration and certainly it's the only one  
25 offering the Micronite filter.

1 Pollay - direct

2 Q. The next advertisement is the one  
3 marked 9/7/53, also from Time. Is that correct?

4 A. That's correct.

5 Q. Is this another advertisement from the  
6 same campaign?

7 A. Yes, it is.

8 Q. And is the message of this  
9 advertisement similar to the ones we have already  
10 discussed?

11 A. Similar. It uses a little greater  
12 emphasis to the greatest health protection in  
13 cigarette history, which it promised had been in  
14 the finer print of the preceding ads, which is  
15 brought up to a subheading here.

16 Q. Is this advertisement different in any  
17 other respect than the ones we just discussed?

18 A. It still shows a demonstration, it  
19 still is addressed to the one out of three smokers,  
20 still promotes the exclusive Micronite filter and  
21 then its fine body print, like the others, talks  
22 about the filter effectiveness.

23 Q. Did this advertisement influence Peter  
24 Rossi's smoking behavior?

25 A. It, like the others he was exposed to,

1 Pollay - direct  
2 would have shaped his attitudes and perceptions and  
3 ultimately his behavior.

4 Q. The next one, Dr. Pollay, is the one  
5 marked 9/28/53, also from Time. Is that correct?

6 A. That's correct, from pages 48 and 49 of  
7 Time.

8 Q. And is this advertisement also one from  
9 the same campaign that we have been discussing?

10 A. Yes, it is.

11 Q. Is the message of this advertisement  
12 similar to the ones that we have just discussed?

13 A. Yes, it is.

14 Q. This advertisement uses the similar  
15 scientific demonstration as we have been talking  
16 about?

17 A. That's correct. It presents it in even  
18 greater detail.

19 Q. Did this advertisement influence Peter  
20 Rossi's behavior?

21 A. Yes, this, like the other campaigns,  
22 other elements of this campaign he was exposed to,  
23 would have influenced his perceptions and attitudes  
24 and ultimately, his behavior.

25 Q. The next advertisement, Dr. Pollay, is

1 Pollay - direct

2 October 26, 1953, also from Time. Do you see that?

3 A. Yes, I do.

4 Q. Is this another advertisement in the  
5 same campaign we have been discussing?

6 A. Yes, it is.

7 Q. And is the message the same as the ads  
8 we have just been discussing?

9 A. Yes, it is, although there is less fine  
10 print in the ad to provide information about the  
11 filter effectiveness, there is a little more focus  
12 on the demonstration and in this case, the  
13 demonstration is not the exact same one taken off  
14 television but a similar demonstration performed by  
15 a salesman on his rounds at various retail stores.

16 Q. Does the decrease in the amount of fine  
17 print in this advertisement reduce how  
18 authoritative it would be to the consumer, to the  
19 reader?

20 A. Not in my judgment because the headline  
21 is very bold in saying look at this test before you  
22 smoke another cigarette.

23 Q. So in this particular advertisement, it  
24 is the headline as opposed to the text that makes  
25 it authoritative?

1 Pollay - direct

2 A. The format as a whole, it's the  
3 headline and the storyboard sequence of stills that  
4 provides the demonstration of this scientific,  
5 pseudoscientific experiment. But what is missing  
6 from this ad that was in previous ads are some of  
7 the detail of information about the fact that there  
8 are 63 million smokers in the nation or that the  
9 filters remove particulate matter down to two  
10 microns.

11 Q. The next advertisement -- excuse me,  
12 Dr. Pollay, before you turn to the next  
13 advertisement, did this advertisement have  
14 influence on Peter Rossi's smoking behavior other  
15 than what you described for the previous ads?

16 A. Yes, this ad, like all of the ads in  
17 this campaign, would have contributed to his  
18 perceptions and attitudes about smoking risks and  
19 Kent filtered and ultimately his behavior.

20 Q. Would this advertisement affect Peter  
21 Rossi's thinking about other brands of filtered  
22 cigarettes?

23 A. It should. It presents the evidence  
24 that this filter is more effective than other  
25 filters.



1 Pollay - direct

2 Q. The next advertisement is marked  
3 T 11/9/53. Is this another ad in the same  
4 campaign, Dr. Pollay?

5 A. Yes, it is. This one is headlined  
6 "Which cigarette gives you the greatest health  
7 protection?" And presents a panel of five  
8 consumers participating in an experiment that  
9 compares the different brands.

10 Q. Is the message in this advertisement  
11 similar to the ads we have just discussed?

12 A. Yes, it is.

13 Q. Was Peter Rossi exposed to  
14 advertisements for other filter cigarettes?

15 A. Yes, he was.

16 Q. During the time that this advertisement  
17 was run?

18 A. Yes, he was.

19 Q. The next advertisement, Dr. Pollay, is  
20 marked November 30, 1953, also, evidently, from  
21 Time Magazine. Is that correct?

22 A. Yes.

23 Q. Is this another advertisement from the  
24 same campaign?

25 A. Yes, it is.

1 Pollay - direct

2 Q. And is the message of this ad similar  
3 to the ads that we have previously discussed?

4 A. Yes, it is.

5 Q. And is the influence of this  
6 advertisement on Peter Rossi's smoking behavior  
7 different than the influence of the advertisements  
8 we have previously discussed?

9 A. No, the ad is similar in character to  
10 the other ads and so its effect should be similar,  
11 as well.

12 Q. The next advertisement, Dr. Pollay, has  
13 typed at the bottom right Time February 10, 1958.  
14 Is that correct?

15 A. Yes.

16 Q. Is this an advertisement that Peter  
17 Rossi was exposed to?

18 A. Again, I don't know for certain but  
19 it's likely that he would have been exposed to the  
20 campaign from which this is drawn.

21 Q. Was this a campaign of long duration?

22 A. I do not believe so.

23 Q. What is the message of this  
24 advertisement?

25 A. That smoking Kent provides a wonderful

1 Pollay - direct

2 feeling and that Kent filters best and that real  
3 men smoke Kent, that is, men who enjoy going  
4 hunting.

5 Q. Is this an advertising campaign that  
6 would have drawn Peter Rossi's interest?

7 A. Perhaps, but by my judgment, I think  
8 the preceding campaigns were likely to have  
9 interested him more.

10 Q. Why is that?

11 A. Because I think as someone college  
12 educated in a scientific area, that he would have  
13 taken an interest in the demonstrations, although I  
14 think he would have taken some interest in this  
15 because he enjoyed fishing and outdoors activities  
16 himself but there is less to be learned from this ad.

17 Q. How did this advertisement influence  
18 Peter Rossi's information environment regarding  
19 smoking?

20 A. It would reinforce the idea that Kent  
21 offered the best filter on the market.

22 Q. Does "best" in this context mean safer,  
23 in your view?

24 A. Yes, it does.

25 Q. So Peter Rossi, from reading this

1 Pollay - direct  
2 advertisement, would think that other filter  
3 cigarettes were less safe than Kents. Is that your  
4 opinion?

5 A. Yes, to the extent that he thought  
6 there was a health risk, that this would be the  
7 most effective response to that.

8 Q. How did this advertisement influence  
9 Peter Rossi's smoking behavior?

10 A. It would have reinforced the perception  
11 established in the preceding campaigns of the  
12 preceding five years that Kent offered the best  
13 filter in the market.

14 Q. The next advertisement, Dr. Pollay, has  
15 a reference in the bottom right 27. There doesn't  
16 appear to be a date on that page. Do you see one?

17 A. Yes, nor the next one, which is from  
18 the same campaign.

19 MS. WALTERS: 1959. It's just above  
20 the 27.

21 Q. This is a 1959 ad. Is that correct?  
22 Is this an advertisement from the same or a  
23 different campaign than the one we just discussed?

24 A. It's a different campaign.

25 Q. And what is the message of this

1 Pollay - direct  
2 advertisement?

3 A. That it makes good sense to smoke Kent,  
4 that Kent is superior now for several reasons, not  
5 only because of its Micronite filter but also  
6 because of superporous micropore paper and its  
7 tobacco. "The best from end to end" is its  
8 underlined claim.

9 Q. The reference to the superporous  
10 micropore paper, is that a health claim, in your  
11 opinion?

12 A. No.

13 Q. Does this advertisement indicate to  
14 Peter Rossi that it is safer to smoke Kent  
15 cigarettes?

16 A. I believe so, in the context of the  
17 preceding ads about the effectiveness of the  
18 Micronite filter, the claim that it filters best,  
19 reinforces that idea and that's what is meant by  
20 making good sense, that is, to protect yourself  
21 against health risks.

22 Q. Would a person who looked at this  
23 advertisement without having been exposed to  
24 previous Kent advertising understand this  
25 advertisement to have a health claim?

1 Pollay - direct

2 A. Perhaps. If they understood that there  
3 were health concerns and allegations about  
4 cigarettes, they might also read "good sense" as  
5 meaning that the filtering best was sensible  
6 because it was responding to the health concerns.

7 Q. How did this advertisement influence  
8 Peter Rossi's smoking behavior?

9 A. Again, it would reinforce his  
10 perceptions that Kent offered the best filter in  
11 the market and it's my opinion that by this time,  
12 he was smoking Kent and so that would have offered  
13 him the reassurance that he had made a sensible  
14 choice in doing so.

15 Q. The next advertisement, Dr. Pollay, can  
16 you discern a date on it?

17 A. No, not from my copy. It looks to be  
18 part of the same campaign so it should be close in  
19 time.

20 Q. Does this advertisement have a message  
21 similar to the one we just discussed?

22 A. Yes. It also shows the cigarette in  
23 the ashtray and describes its many elements and it  
24 revolves around the headline "Kent filters best."

25 Q. Did this advertisement have the same

1 Pollay - direct  
2 influence on Peter Rossi's behavior as you  
3 indicated for the previous ad?

4 A. Yes, that it would reinforce him that  
5 he had chosen the best filter available in the  
6 market.

7 Q. Would the advertisements, specific  
8 advertisements within the same campaign all have  
9 the same effect on Peter Rossi's smoking behavior?

10 A. If they are all designed with equal  
11 effectiveness to attract attention, certainly that  
12 would be their intent, to be equally as effective  
13 to provide variation just to avoid boredom.

14 Q. Can you turn the page, please, Dr.  
15 Pollay. The next advertisement is dated January  
16 18, 1963, from Time. Is that correct?

17 A. No, I have one that you may not have.

18 Q. What is the next one that you have?

19 A. Then we missed one someplace along the  
20 way. There were two without dates -- three without  
21 dates. "It makes good sense to smoke Kents," two  
22 "Kent filters best" -- three "Kent filters best."

23 Q. The last "Kent filters best" without a  
24 date is the one with the photograph of the man with  
25 the cigarette in his hand that says at the top

1 Pollay - direct

2 "there is no substitute for quality," is that what  
3 you have in your book?

4 A. That's correct, and I have yet to  
5 discuss that.

6 Q. And is that an advertisement from the  
7 same campaign that we have just previously been  
8 discussing?

9 A. Yes, although in layout, it's a variant  
10 of the preceding ones. It no longer shows a  
11 cigarette in the ashtray.

12 Q. Is the message of this advertisement  
13 the same as the other ads from the same campaign?

14 A. Yes, with slightly different emphasis  
15 on the elements in the ad.

16 Q. Was the influence of this advertisement  
17 on Peter Rossi's smoking behavior the same as the  
18 other advertisements in the same campaign?

19 A. It would be similar. As I say, there  
20 is slightly different emphasis on the elements.

21 Q. And the next advertisement, Dr. Pollay,  
22 is dated January 18, 1963, also from Time  
23 Magazine? Are we on the same page now?

24 A. Yes.

25 Q. And this advertisement is from a



1 Pollay - direct

2 different campaign. Is that correct?

3 A. That's correct.

4 Q. And what is the message of this  
5 advertisement?

6 A. That you can be reassured by smoking  
7 Kent, you are treating yourself kindly by smoking  
8 Kent.

9 Q. Where do you read that in the  
10 advertisement, Dr. Pollay?

11 A. In the entitling on the illustration  
12 itself.

13 Q. It says "treat your taste kindly with  
14 Kent," is that what you are reading?

15 A. That's correct. The picture shows a  
16 pastoral scene with a couple by a creek. It's  
17 probably not too visible in your copy but it's an  
18 autumnal scene with water gently flowing in the  
19 background.

20 Q. Do you interpret this advertisement as  
21 having a health claim?

22 A. I judge that the "treat your taste  
23 kindly" has a health connotation.

24 Q. Is there anything else about the  
25 advertisement that communicates a health claim?

1 Pollay - direct

2 A. It's not a claim in the sense of a  
3 verbal assertion, but it is designed to respond to  
4 the health concerned smoker by showing people at  
5 ease and calm and reassured. It's an example of  
6 the more visual approach to advertising and backing  
7 away from the more assertive verbal claims.

8 Q. Would an individual who had not been  
9 exposed to earlier Kent advertisements receive a  
10 health message from this ad?

11 A. They might, if they were aware of all  
12 of the allegations about the health consequences of  
13 smoking, the notion of refining and treating  
14 yourself kindly might well suggest that this is a  
15 benign cigarette as opposed to others which are  
16 more dangerous.

17 Q. What was the influence of this  
18 advertisement on Peter Rossi's smoking behavior?

19 A. It would have reinforced him that he  
20 was treating himself kindly by smoking Kent.

21 Q. Was Kent in 1963 advertising its  
22 filters as the best filter on the market?

23 A. It refers now to the new Micronite  
24 filter, which it's my understanding probably was no  
25 longer the best filter on the market. So it does

1 Pollay - direct

2 not make that claim.

3 Q. Were there other brands of cigarettes,  
4 other brands of filter cigarettes that advertised  
5 their filters as being the best filters on the  
6 market?

7 A. Some. There were certainly lots who  
8 talked about filter effectiveness. I don't  
9 remember direct comparative advertising such as  
10 Kent did with the head to head comparisons with the  
11 competitive product.

12 Q. Peter Rossi in the late 1950's, mid to  
13 late 1950's, exposed to cigarette advertisements,  
14 would find Kent as the only brand advertised as  
15 having the best filter on the market. Is that  
16 correct?

17 A. In the late 1950's, I believe so in the  
18 sense that I'm not -- I don't recall any  
19 competitive advertising that would have made  
20 comparative claims. In addition, there was in 1957  
21 or '58 a Reader's Digest report that was judged to  
22 be as good as an endorsement for the Kent filter  
23 and coincident with that, the Kent campaign, which  
24 we do not have exemplified here, called attention to  
25 those results.

1 Pollay - direct

2 Q. What were the results reported in the  
3 Reader's Digest article?

4 A. Just that the Kent filtered best, so  
5 consistent with the claims that Kent had been  
6 making over the years.

7 Q. You had mentioned earlier a Kent  
8 advertisement concerning an AMA study. Is that  
9 correct?

10 A. That's correct.

11 Q. What was the results of the AMA study?

12 A. That there was a small and by their  
13 reckoning, insignificant difference in the level of  
14 nicotine delivery but that that difference was in  
15 the favor of Kent.

16 Q. In your opinion, were the Kent  
17 advertisements that claimed that its filter was the  
18 best filter on the market true or untrue?

19 A. I think through much of the period,  
20 they were making a mountain out of a molehill; that  
21 according to the American Medical Association, the  
22 difference was not all that substantial. In fact,  
23 they complained vigorously about the implied  
24 endorsement in those ads and Kent apparently  
25 modified the filter on several occasions throughout

1 Pollay - direct

2 its history and I think the general direction of  
3 those modifications was to loosen the filter to  
4 permit more tar and nicotine delivery.

5 Q. Was Peter Rossi influenced by  
6 advertising for other brands of cigarettes during  
7 the time period that he was smoking Chesterfield?

8 A. Yes, I believe that all of the  
9 advertising for cigarettes he would have seen,  
10 which was increasingly for filtered product, would  
11 have led him to increasingly judge that there might  
12 well be a reason for all these filtered products.  
13 So that his perceptions of whether or not there was  
14 a health risk and which brands would offer the best  
15 response to that health risk, if he concluded that  
16 that was substantial, would have been affected.

17 MR. ALLINDER: Cindy, I'm going to take  
18 a short break, which I realize comes out of my time  
19 for the afternoon.

20 MS. WALTERS: Okay.

21 MR. ALLINDER: And do you want me to  
22 have the receptionist give you a call?

23 MS. WALTERS: Yes, unless you know when  
24 you will come back.

25 MR. ALLINDER: I shouldn't be more than

1 Pollay - direct  
2 about five minutes. I will take a comfort break  
3 and we will get started again.

4 MS. WALTERS: Okay.

5 (Whereupon a recess was taken.)

6 Q. Doctor, the last advertisement we were  
7 discussing, as I recall, was the one dated February  
8 1, 1963. Is that correct?

9 A. Just a minute, I will be with you.  
10 February 1 -- we had discussed the one preceding  
11 that so we are up to that one.

12 Q. The advertisement that is labeled  
13 T 2/1/63 BC, that's the one we are going to discuss  
14 now, that also is a reference that this  
15 advertisement appeared in Time on February 1,  
16 1963. Is that correct?

17 A. Yes. BC probably means back cover.

18 Q. Is this an advertisement that is  
19 another within the same campaign of the one we just  
20 talked about?

21 A. That's right.

22 Q. And what is the message of this  
23 advertisement?

24 A. This campaign is about treating  
25 yourself kindly with the Kent product that's

1 Pollay - direct

2 refining, that is, refines away the roughness of  
3 cigarettes, the harshness of cigarettes.

4 Q. And is that a health message, in your  
5 opinion?

6 A. Yes, it is. It is a reassurance to the  
7 health concern.

8 Q. Is this a message that would be  
9 understood by a person as a health message who had  
10 not been exposed to Kent advertising in previous  
11 years?

12 A. I think as I responded to the same  
13 question in the preceding ad, perhaps, if they  
14 understood the seriousness of the health  
15 allegations against the cigarette product, they  
16 would infer that treating yourself kindly and  
17 refining away harshness and roughness was removing  
18 the health problem, dealing with the health problem.

19 Q. Would Peter Rossi understand this ad to  
20 have a health message?

21 A. I'm not sure whether he or any consumer  
22 would necessarily articulate that in exactly the  
23 same way I would but I think they would take health  
24 reassurance from that and when asked for playback  
25 on Kents, they would provide health-related

1 Pollay - direct  
2 responses.

3 Q. How do you know what message Peter  
4 Rossi would take from this advertisement?

5 A. I assume that as a Kent smoker, he  
6 would be reading this ad and like others reading  
7 the ad, would do so in light of the health concerns  
8 that were common and would be reassured by the calm  
9 demeanor being modeled and the words about treating  
10 yourself kindly.

11 Q. Would all Kent smokers read this  
12 advertisement in that same way?

13 A. No, not necessarily. I think the  
14 research documents for this campaign indicate that  
15 those kind of health-related responses were the  
16 more common but they were not the only responses.

17 Q. Were there Kent smokers who were  
18 exposed to this advertisement in 1963 who didn't  
19 understand the advertisement to contain a health  
20 message?

21 A. Again, in my judgment, this ad  
22 functions in part on a visual basis, that is so  
23 people seeing the ad would have the experience of  
24 seeing these people being relaxed with their Kent  
25 cigarette. That would be their experience. It



1 Pollay - direct

2 takes no understanding or other cognitive work, as  
3 you suggest, to have had that experience and so  
4 with repeated exposures, that would be a health  
5 relevance experience, it would be part of the  
6 reassurance that they received from this ad.

7 Q. Do the company documents you referred  
8 to as the basis of your opinion indicate that 100  
9 percent of the Kent smokers who read this  
10 advertisement understood it to be a health message?

11 A. A hundred percent? No.

12 Q. Some Kent smokers in 1963 exposed to  
13 this advertisement would, then, understand it to  
14 not have a health message?

15 A. When asked for a spontaneous recall  
16 after exposure to the ad, some people provided  
17 playback about taste.

18 Q. What percentage?

19 A. I forget the exact percent but I do  
20 recall it was a smaller percent than were providing  
21 health relevant playback.

22 Q. What percentage responded with health  
23 relevant playback?

24 A. We will have the dig out the document  
25 to answer that to the precision you request. Where

1 Pollay - direct

2 are those documents? The documents from March  
3 22nd.

4 Q. (Hanging).

5 A. The document which I will base that  
6 opinion upon is called a claim test of six copy  
7 themes for Kent cigarettes and on the top, it seems  
8 to say 11K-03-62.

9 Q. Dr. Pollay, could you read the document  
10 ID number on the first page and the last page of  
11 the document you are referring to?

12 A. Yes. 84420695 through 20715.

13 Q. And which page are you referring to?

14 A. Page 20703. This document is a test of  
15 alternative ways of expressing the kindness theme.  
16 Kindness is the core concept sought to be  
17 communicated and there are various slogans in  
18 comparative tests here. This page refers to the  
19 results for treat your taste kindly.

20 Q. Is that document the basis of your  
21 opinion regarding the message that a Kent smoker  
22 would take about the advertisement we were  
23 referring to?

24 A. In part.

25 Q. What are the other bases of your

1 Pollay - direct  
2 opinion?

3 A. My own judgment about the reason for  
4 the pastoral scene, my experience with the  
5 motivation research results in this preceding era  
6 that led, among other factors, led to the  
7 development of the visual-based strategies. There  
8 are other pages in this document which present  
9 various data.

10 Q. Dr. Pollay, after you have had an  
11 opportunity to refer to that document, what  
12 percentage of the Kent smokers reading the  
13 advertisement we were discussing, the one labeled  
14 T 2/1/63, would understand this ad to convey a  
15 health message?

16 A. Again, I should repeat what I said  
17 before. The conveyance of the health message does  
18 not necessarily require the cognitive awareness on  
19 the part of consumers that that is what is going  
20 on, it is their experience of a health image, that  
21 is, a picture of health may be sufficient to  
22 contribute to their perceptions and attitudes.

23 Q. Can you answer the question after  
24 referring to the document are there some Kent  
25 smokers reading this advertisement who would

1 Pollay - direct  
2 understand it to convey a message other than  
3 health?

4 A. There are 24 percent who report  
5 kindness in the playback and there are six percent  
6 who report better flavor or a treat to your taste  
7 in the playback.

8 Q. I'm sorry, what was the first  
9 percentage that you gave me?

10 A. 24 percent report kindness as the core  
11 concept, being treated kindly, mild, not harsh, and  
12 six percent report a treat for your taste or better  
13 flavor.

14 Q. Were only 30 percent of the responses  
15 reported or are there other categories, as well?

16 A. There are some 40 percent who applaud  
17 the slogan because it's short and to the point.

18 Q. And it is your opinion that Peter Rossi  
19 falls within the 24 percent of the True smokers who  
20 understood this ad to convey a kindness message?

21 A. Yes, it's my opinion that the ad is  
22 designed to communicate gentleness involved in rich  
23 flavor and that's the function of the visual, to  
24 underscore the gentleness concept.

25 Q. What is your opinion about how this

1 Pollay - direct  
2 advertisement affected Peter Rossi's smoking  
3 behavior?

4 A. That it would reinforce his brand  
5 choice of Kent and contribute to his judgment that  
6 he had made an appropriate choice in responding to  
7 any concerns he might have about health  
8 consequences of smoking.

9 Q. Would your answer to that question be  
10 any different if it was directed at any other True  
11 smoker -- excuse me, Kent smoker in 1963? If we  
12 picked person X, a Kent smoker, rather than Peter  
13 Rossi, and I asked you how did this advertisement  
14 influence that individual's smoking behavior, would  
15 you give the same answer?

16 A. Certainly the same unless I knew  
17 specifics to lead me to another response because  
18 the smokers for the Kent product as a group would  
19 be concerned smokers relative to the larger  
20 universe of all smokers.

21 Q. Is it correct that in formulating your  
22 opinion regarding the influence of this  
23 advertisement on Peter Rossi's smoking behavior,  
24 you considered Peter Rossi to be similar to other  
25 smokers of Kent cigarettes?

1 Pollay - direct

2 A. Yes, in general. He, like other  
3 smokers of the Kent product, has above average  
4 education and is reasonably well read so being an  
5 average Kent smoker is not necessarily the same as  
6 being an average citizen.

7 Q. And you consider Peter Rossi to be an  
8 average Kent smoker unless you have information to  
9 the contrary. Is that correct?

10 A. That's correct.

11 Q. Is this a transformational  
12 advertisement or an informational advertisement?

13 A. It's to some extent both but I would  
14 say it's primarily transformational in character.

15 Q. What aspects of the advertisement are  
16 transformational in character?

17 A. It's transformational because most of  
18 the work, in my judgment, is performed by the  
19 illustration and the slogan "treating yourself  
20 kindly," for which there is not much supportive  
21 argumentation.

22 Q. Be which aspects of the advertisement  
23 are informational in nature?

24 A. There is in smaller print reference to  
25 a new Micronite filter. So apparently, the filter

1 Pollay - direct

2 has been changed. So if you read the smaller  
3 print, you might be aware that the filter is no  
4 longer the same as it was.

5 Q. Is there a difference in credibility  
6 between transformational advertisements and  
7 informational advertisements to the average  
8 consumer?

9 A. It's my opinion that transformational  
10 advertising, the issue of credibility does not  
11 arise, that the ad is experienced and there is  
12 relatively little assessment for credibility.  
13 There are no verbal assertions to be weighed in the  
14 picture.

15 Q. Is there an issue of credibility in  
16 informational advertisements?

17 A. In what?

18 Q. In informational advertisements.

19 A. Potentially, but I think the average  
20 citizen assumes that the advertising is not false  
21 and misleading in any material respect, that it's  
22 sufficiently regulated to spare them from that.

23 Q. Are there different degrees or let me  
24 ask the question a different way, do advertisements  
25 differ in degree in terms of the informational

1 Pollay - direct

2 content?

3 A. Yes.

4 Q. So an advertisement can contain more  
5 information than another advertisement. Is that  
6 essentially what you are saying?

7 A. That's correct.

8 Q. Is the issue of credibility more  
9 significant for an advertisement that contains more  
10 information than it is significant for an  
11 advertisement that contains less information?

12 A. I don't believe so. To the extent that  
13 credibility is an issue, and as I say, it often is  
14 not, I say it most typically is not, it presumed  
15 that ads are held to some standard of truthfulness  
16 or the ad is experienced without an assessment of  
17 credibility. Whatever information is in the ad  
18 would be judged to be honest even if self-serving.

19 Q. I take it, then, you would disagree  
20 with the statement that people tend to  
21 counter-argue more with advertisements that contain  
22 more as opposed to less information?

23 A. No, it's not a question of more versus  
24 less information. What I would say is that ads  
25 that are transformational in character are less



1 Pollay - direct

2 inclined to provoke counter-arguing. Ads that are  
3 informational in character may provoke  
4 counter-arguing or more likely than  
5 transformational ads to provoke counter-arguing.

6 Q. What is the concept of counter-arguing?

7 A. Put simply, it's those cognitions that  
8 occur spontaneously in the consumer when they are  
9 exposed to an assertion that says that can't be  
10 true and begin to provide arguments against the  
11 thesis of the ad.

12 Q. Does counter-arguing occur only when it  
13 is apparent that the information contained in the  
14 advertisement is false?

15 A. It occurs when credibility is strained.

16 Q. Is credibility strained in  
17 advertisements that make extreme claims, such as  
18 the best of something?

19 A. It depends on the nature of the extreme  
20 claim. It can be.

21 Q. If there are a variety of products on  
22 the market and an advertisement for a single brand  
23 of this product says that it is the best of all of  
24 them, is that an extreme claim?

25 A. No, not necessarily. That claim tends

1 Pollay - direct

2 to be commonplace, if it's just said in a general  
3 way like that, like we are the best restaurant in  
4 town, for example.

5 Q. Do consumers in general accept at face  
6 value claims such as that, we are the best  
7 restaurant in town?

8 A. Something that's of a general nature  
9 like that they may feel to be the opinion of the  
10 advertiser. If it's presented in a more scientific  
11 way or as the opinion of an independent judge, that  
12 would be a different matter.

13 Q. Is the credibility of a claim such as  
14 that, we are the best restaurant in town, more  
15 extreme when there are competitors advertising  
16 their products similarly?

17 A. Is it more extreme? No, it sounds like  
18 the way you framed the question that it's more  
19 commonplace.

20 Q. Would that lead to consumers  
21 questioning the credibility of the advertisement  
22 more?

23 A. I think it leads to people concluding  
24 that that's the opinion of the proprietor, the  
25 advertiser.

1 Pollay - direct

2 Q. Does that mean that that advertisement  
3 would have lower credibility?

4 A. Lower than what?

5 Q. Lower than an advertisement where there  
6 were not competitors' claims, competing claims.

7 A. I think the ad would have more  
8 credibility if it was the only person, the only  
9 firm making such a claim, would have even more  
10 credibility if it was able to marshal evidence like  
11 consumer panel data or gourmet assessments or  
12 something like that to remove it from the  
13 presentation of their own opinion to the opinion of  
14 others.

15 Q. Dr. Pollay, if competitors selling the  
16 same product, selling different brands of the same  
17 product, all use independent endorsements in their  
18 advertisements, does that lead consumers to  
19 question the credibility of the independent  
20 endorsements?

21 A. If they are all offering identical  
22 claims, I would think so. If all restaurants  
23 claimed to be rated the number one choice of the  
24 New York Times food editor, that would clearly be  
25 an impossible situation.

1 Pollay - direct

2 Q. Is a celebrity endorsement the same as  
3 an independent endorsement, the way you are  
4 using --

5 A. A celebrity endorsement, no.

6 Q. Does the celebrity endorsement make the  
7 information in an advertisement appear more  
8 credible to the average consumers?

9 A. Yes, it does.

10 Q. And how does it do that?

11 A. It increases credibility and recall by  
12 approximately 50 percent, as a rule of thumb.

13 Q. Does the increase in the recall  
14 correspond to an increase in credibility, in your  
15 opinion?

16 A. I believe that's what I just said, yes.

17 Q. Dr. Pollay, the next advertisement in  
18 your book I believe is dated March 8, 1963. Are we  
19 together or are we separated?

20 A. March 8, 1963.

21 Q. The same one. This also is from Time  
22 and apparently, from the notation on the  
23 advertisement, it appeared on the front cover. Is  
24 that correct?

25 A. Yes, the inside of the front cover.

1 Pollay - direct

2 Q. Is this an advertisement from the same  
3 campaign as the one we just discussed?

4 A. Yes, it is.

5 Q. And what is the message of this ad if  
6 it is different from the other ads in the campaign  
7 we have already discussed?

8 A. The message is a health reassurance to  
9 concerned smokers, that Kent is kind.

10 Q. What is the message that Peter Rossi  
11 received from this advertisement?

12 A. It would have contributed to his  
13 perceptions that Kent was kind.

14 Q. And any other Kent smoker would have  
15 received the same message. Is that correct?

16 A. Yes, more likely than not.

17 Q. And I take it, Dr. Pollay, that this  
18 advertisement would have had the same influence on  
19 Peter Rossi's smoking behavior, in your opinion, as  
20 the prior advertisements from the same campaign we  
21 have previously discussed?

22 A. Yes.

23 Q. The next one is April 12, 1963. Is  
24 that from the same campaign?

25 A. Yes, it is.

1 Pollay - direct

2 Q. And that also would have similar  
3 messages and similar influence on Peter Rossi, in  
4 your opinion?

5 A. That's correct. The entire campaign is  
6 built around showing couples at ease in outdoor  
7 settings and of course, they are far more  
8 attractive in color than they are in black and  
9 white.

10 Q. Dr. Pollay, will you turn, please,  
11 about four or five pages until you get to an  
12 advertisement that's marked September 13, 1963.  
13 That's also from Time Magazine, it appears?

14 A. That's correct.

15 Q. And this is an advertisement from a  
16 different campaign. Is that correct?

17 A. That's correct.

18 Q. What is the message of this  
19 advertisement?

20 A. That Kent should be your preference and  
21 you have to read the fine print to get a message as  
22 to why. It's a balance, several points is  
23 communicated between balance of filtration and  
24 taste. So it offers mildness and satisfying taste,  
25 a fine filter, a mild taste. So balance is the key

1 Pollay - direct

2 word repeated throughout the campaign.

3 Q. Would the ordinary smoker exposed to  
4 this advertisement read the fine print?

5 A. Perhaps not the finest of the print but  
6 the subheads that are done in capitals and the  
7 balance idea is repeated and would be repeated in  
8 further extensions of the campaign.

9 Q. Would Peter Rossi have read the fine  
10 print in this advertisement?

11 A. I don't know.

12 Q. What message would Peter Rossi have  
13 received from this ad?

14 A. You should choose Kent and then if he  
15 read the fine print, because it offered a balance  
16 of filtration and taste.

17 Q. Is there a health message in this  
18 advertisement, Dr. Pollay?

19 A. It was a reinforcement of the idea that  
20 this is a fine filter and then another concept is  
21 introduced compared to some of the previous  
22 campaigns about satisfying taste.

23 Q. Where do you find the words "fine  
24 filter" in the headline?

25 A. Beneath the headline, it says, "Kent,

1 Pollay - direct

2 the finer the filter, the milder the taste."

3 Q. Does "finer filter and mild satisfying  
4 taste" indicate a health message to you?

5 A. Yes. The fine filter is a reinforcer  
6 of the established credibility of the Micronite  
7 filter.

8 Q. Is there anything else about this  
9 advertisement that contains a health message?

10 A. That idea is reinforced, Lorillard  
11 research developed the Micronite filter to do a  
12 good job in filtration, so it indicates that  
13 research was involved in developing an ideal  
14 filter.

15 Q. What is the basis of your opinion that  
16 Peter Rossi would understand the health message  
17 from this advertisement?

18 A. I don't believe I said that.

19 Q. I'm sorry, I forgot to ask you the  
20 question, then. We have certainly been going from  
21 ad to ad. Let me ask you the question first. What  
22 message would Peter Rossi have understood from this  
23 advertisement?

24 A. That question I believe you did ask, my  
25 response to that was Kent should be your choice.



1 Pollay - direct

2 Q. It is your opinion, then, that Peter  
3 Rossi did not understand this advertisement to have  
4 a health message?

5 A. I can't be sure. The ad is ambiguous.  
6 It simply asks a rhetorical question to suggest  
7 that you should smoke Kent and unless you read the  
8 fine print, you are not -- or the finer print, the  
9 text below the illustration, you do not get a  
10 reason why you should choose Kent. When you do do  
11 that, you get the two reasons presented in tandem  
12 of effective filtration and satisfying taste.

13 Q. Unless we know whether Peter Rossi read  
14 the fine print, you can't determine what the  
15 message was that he received from this  
16 advertisement. Is that correct?

17 A. I said it twice so I hope this is  
18 sufficient as the third time, the message of this  
19 ad is that you should choose Kent. The reasoning  
20 why is what is left ambiguous in the ad and perhaps  
21 is why the campaign is of such short duration.

22 Q. Did Kent smokers understand this  
23 advertisement to have a message different than  
24 that?

25 A. I don't know. I don't recall if we

1 Pollay - direct

2 have documents testing this ad.

3 Q. Do you require internal testing  
4 documents to evaluate before you can determine the  
5 message that smokers receive from an advertisement?

6 A. No, but it helps. I mean obviously, if  
7 such documents are available, I would be happy to  
8 see them.

9 Q. The next advertisement, Dr. Pollay, is  
10 October 11, 1963, apparently also from Time, this  
11 time on the back cover. Is that correct?

12 A. Yes.

13 Q. Is this an advertisement from a  
14 different campaign than the ones we just discussed?

15 A. Yes, it is.

16 Q. What is the message from this  
17 advertisement?

18 A. This campaign and its continuation that  
19 is over the next several months places greater  
20 emphasis on smoking pleasure and taste. Again, it  
21 presents the ideas in tandem of the best  
22 combination of filter and taste, or as it's  
23 sometimes expressed in the largest print, the best  
24 combination of filter action and satisfying taste.

25 Q. Does this advertisement contain a

1 Pollay - direct  
2 health message?

3 A. It reinforces the notion that this is  
4 an effective filter and gives parallel emphasis to  
5 smoking pleasure and satisfying taste.

6 Q. Does any advertisement for a filter  
7 cigarette inherently include a health message?

8 A. No, or at least the health message  
9 wouldn't be the predominant message of some filter  
10 cigarette ads.

11 Q. Would any advertisement for a brand of  
12 filter cigarettes that advertises the effectiveness  
13 of the filter contain a health message?

14 A. Yes, I believe so.

15 Q. Dr. Pollay, did Kent advertising  
16 influence Peter Rossi's decision to switch to Kent  
17 cigarettes?

18 A. Yes, I believe so.

19 Q. Were there any other influences on  
20 Peter Rossi's decision to switch to Kent cigarettes  
21 other than Kent advertising?

22 A. There may have been other influences  
23 that convinced him that it was appropriate to  
24 switch to a filter cigarette. I would think that  
25 the Kent advertising would be the predominant

1 Pollay - direct

2 influence on why he chose Kent of the filters that  
3 are available when he did switch.

4 Q. The Kent advertising was the  
5 predominant influence on his decision to switch to  
6 Kent. Were there other influences that were not  
7 predominant?

8 A. Yes.

9 Q. Which ones were they?

10 A. As we mentioned before, all of the  
11 advertising on behalf of filters suggests that  
12 there may be a health problem for which filters are  
13 an effective response and there were some stories  
14 in circulation throughout the fifties that was  
15 suggesting the growing popularity of filters and  
16 some of the allegations about the health  
17 consequences of smoking.

18 Q. Did these articles appear in  
19 publications which Peter Rossi read?

20 A. The articles about the health  
21 consequences of smoking and the refutations to  
22 those articles were commonplace so they appeared in  
23 almost all newspapers, magazines, at least news  
24 magazines and less frequently on radio and  
25 television.

1 Pollay - direct

2 Q. What about the articles concerning  
3 growing popularity of filter cigarettes, did they  
4 appear in publications read by Peter Rossi?

5 A. They most likely would have been an  
6 element in other stories rather than the feature of  
7 a story itself but the fact of the growing  
8 popularity of cigarettes and the growing amount of  
9 advertising for filtered cigarettes would have been  
10 obvious to anyone living in this society.

11 Q. Dr. Pollay, which Kent advertisements,  
12 in your opinion, influenced Peter Rossi's decision  
13 to switch to Kent cigarettes?

14 A. All the advertisements that he had seen  
15 preceding his switch would have an influence and  
16 that's how advertising works, on a cumulative  
17 basis, gradually changing perceptions and  
18 attitudes.

19 Q. You used the term "seen" in your  
20 answer. Are you intending to say something  
21 different than exposed to?

22 A. No, but what I mean is -- exposed to is  
23 perhaps better because that would also include  
24 radio advertising in addition to the television and  
25 print and billboard.

1 Pollay - direct

2 Q. So all Kent advertisements he was  
3 exposed to prior to this switching influenced his  
4 decision?

5 A. Yes, would contribute to his decision,  
6 yes.

7 Q. And did all advertisements for other  
8 brands of filter cigarettes influence his decision  
9 to switch to Kent?

10 A. I believe they would play a role. They  
11 would be part of the influences on his decision to  
12 switch to a filter and then he would weigh all of  
13 the alternative filters on the basis of his  
14 perceptions of those and each of those perceptions  
15 would have been shaped by the advertising he had  
16 seen for those various products over the years in  
17 which they were advertised.

18 Q. Is your opinion without limitation in  
19 time, meaning this: If there were a filter  
20 advertisement in 1940 that Peter Rossi was exposed  
21 to, would that have influenced his decision to  
22 switch to Kent?

23 A. I think that would be far less likely.  
24 Obviously, I think the advertising of the fifties,  
25 during the period in which filters were becoming

1 Pollay - direct

2 dramatically more commonplace and popular and were  
3 being promoted in response to the health concerns,  
4 would be those that would have the greater  
5 influence than something more remote in time.

6 MS. WALTERS: Are you almost finished  
7 for today?

8 MR. ALLINDER: I have one more minute  
9 by my clock.

10 MS. WALTERS: Okay.

11 MR. DUKE: Actually, there are two and  
12 a half.

13 MR. ALLINDER: Of course, if we  
14 continue to talk, we will use up all the time.  
15 Paul is representing that --

16 MR. DUKE: Go ahead. New Jersey Bell  
17 gets the time from me.

18 Q. In your opinion, did cigarette  
19 advertisements for filtered brands prior to 1955  
20 influence Peter Rossi's decision to switch to Kent?

21 A. Yes.

22 Q. Prior to 1954?

23 A. Yes.

24 Q. '53?

25 A. Yes.

1 Pollay - direct

2 Q. But not before 1950. Is that the way I  
3 understand it?

4 A. No, I didn't draw a black and white  
5 distinction. I mean, he at the moment of his  
6 switching behavior, would have perceptions of the  
7 available products that would have been influenced  
8 in large measure by the advertising that he had  
9 seen for those products.

10 Q. Is there any way to distinguish between  
11 the effect of an advertisement that occurs --  
12 strike that question.

13 MR. ALLINDER: And with that strike, we  
14 will stop.

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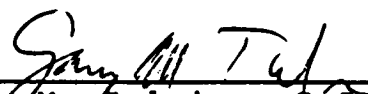


## C E R T I F I C A T E

I, GARY M. TALPINS, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, RICHARD W. POLLAY was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and, that I am not financially interested in the action.

  
\_\_\_\_\_  
Gary M. Talpins, C.S.R.  
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